

88-298 (1)

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No.

JOSEPH E. SPANIOLO, JR.  
CLERK

In The

# Supreme Court of the United States

October Term, 1987

MARKET STREET MISSION,

*Appellant,*

vs.

BUREAU OF ROOMING AND BOARDING HOUSE  
STANDARDS, DEPARTMENT OF COMMUNITY AFFAIRS,  
STATE OF NEW JERSEY,

*Appellee.*

*On Appeal from the Supreme Court of New Jersey*

## JURISDICTIONAL STATEMENT AND APPENDIX FOR APPELLANT

GARY C. ALGEIER  
RAND, ALGEIER, TOSTI,  
WOODRUFF & FRIEZE, P.C.

*Attorneys for Appellant*

60 Washington Street  
Morristown, New Jersey 07960  
(201) 539-2600



## QUESTIONS PRESENTED

Since 1889, the Market Street Mission has operated a rescue mission centered on the belief that teaching the message of the Gospel to alcoholics will enable them to overcome the temptations of the flesh, and reform them from their alcoholism. In 1979, the New Jersey Legislature enacted the Rooming and Boarding House Act. The Act, and Regulations promulgated thereunder, establish sweeping state regulation and control of facilities defined as "boarding houses" in New Jersey.

1. Do the Act and Regulations, which grant to persons residing in religious institutions the right to refuse to practice the tenets of the institution and the ability to remain free from eviction, violate the First Amendment?

2. Do the Act and Regulations, which empower state officials to regulate the day-to-day operations of religious institutions defined as "boarding houses," including, among others, the power to "delete" the "house rules" of the institution found to be "unreasonable," violate the First Amendment?

3. Has the State of New Jersey, by selectively enforcing the Act against certain religious institutions such as the Market Street Mission, and not against others such as Roman Catholic convents, monasteries, and rectories, violated the equal protection clause of the Fourteenth Amendment?

## **PARTIES TO THE PROCEEDING**

The caption of the case in this Court contains the names of all parties to the proceedings below.<sup>1</sup>

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1. Pursuant to Rule 28.1 of the Rules of the Court, Market Street Mission, Inc., a nonprofit corporation of the State of New Jersey and tax-exempt organization under the federal tax laws, is a member of the International Union of Gospel Missions, Inc., a not-for-profit corporation of the State of Missouri. Market Street Mission, Inc. has no subsidiaries or affiliates.



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MARKET STREET MISSION,

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vs.

BUREAU OF ROOMING AND BOARDING HOUSE  
STANDARDS, DEPARTMENT OF COMMUNITY AFFAIRS,  
STATE OF NEW JERSEY,

*Appellee.*

*On Appeal from The Supreme Court of New Jersey*

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**JURISDICTIONAL STATEMENT AND APPENDIX FOR  
APPELLANT**

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**OPINIONS BELOW**

The opinion of the Supreme Court of New Jersey is reported  
at 110 N.J. 335 (1988) and appears in the appendix (1a).

The opinion of the Appellate Division of the Superior Court of New Jersey appears at 217 N.J. Super. 56 (1987) and appears in the appendix (13a).

The Initial Decision of Administrative Law Judge George Perselay, which was adopted by the Commissioner of the New Jersey Department of Community Affairs (50a), is not reported. It appears in the appendix (31a).

### **JURISDICTION**

By Judgment dated May 19, 1988 the Supreme Court of New Jersey held that the Rooming and Boarding House Act of 1979 ("Act"), *N.J.S.A. 55:13B-1, et seq.*, was intended to apply to sectarian institutions such as the Market Street Mission. That Court also held that the Act and Regulations did not infringe on rights protected by the Religion Clauses of the First Amendment. A Notice of Appeal to this Court was filed in the Supreme Court of New Jersey on August 1, 1988 (51a).

This Appeal is being docketed in this Court within 90 days after the entry of the judgment appealed from.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

### **CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED**

The First Amendment of the United States Constitution provides in relevant part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

The Fourteenth Amendment of the United States Constitution, Section One, provides in relevant part:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

The Rooming and Boarding House Act of 1979, *N.J.S.A. 55:13B-1, et seq.*, and the relevant provisions of the Regulations promulgated thereunder, *N.J.A.C. 5:27-1.1, et seq.*, are set forth in the appendix (54a-115a).

### STATEMENT OF THE CASE

The Market Street Mission ("Mission"), Morristown, New Jersey, was founded in 1889 to aid:

the spiritual, mental, moral, and physical improvement of men, women and children by conducting a gospel rescue Mission . . . to minister to the spiritual, moral, mental and physical needs of man, women and children, by the proclamation of the message of God's Saving Grace through the sacrificial and redemptive work of the Lord Jesus Christ on the Cross and by supplying food, shelter, clothing and other necessary comforts to the poor and needy.

The Mission receives no funds or aid from any governmental agency. It funds its work through a thrift store and the generosity of private individuals and churches.

Policy at the Mission is set by a Board of Trustees and executed by an executive staff of officers. Each trustee and officer must subscribe to a Christian doctrinal statement requiring belief "in the Scriptures of the Old and New Testaments as fully inspired by God, and of Supreme and final authority in faith and life."

The philosophy of the Mission is that through the word of God a person can overcome his or her physical and spiritual shortcomings. The Mission opens its doors to alcoholics willing to put their faith in the Christian Gospel.

Upon entering the Mission, a beneficiary is expected to remain for a program of 90 days. As a condition of residency, each beneficiary is required to abide by certain rules (*e.g.*, attend daily chapel services and weekly Bible classes, abstain from consuming alcoholic beverages and take part in the Mission's therapeutic work program). The men are not paid for their work, it being viewed by the Mission as part of its program to restore a person's self-image.

There are no leases and no rent is charged. In addition to shelter, every beneficiary is provided with food and clothing at no cost.

The program at the Mission is neither social nor secular in purpose. In short, the Mission operates a self-contained religious community to rehabilitate alcoholics through work therapy, religious instruction and worship, and withdrawal from the temptations of life. However, the heart of the program is the gospel message as found in the Bible.

On January 9, 1984, an inspector for the New Jersey Department of Community Affairs, Bureau of Rooming and Boarding House Standards ("Bureau"), conducted an inspection of the Mission's building in Morristown. The Bureau cited alleged violations of fire safety regulation and ordered the Mission to abate them. The Bureau later assessed a penalty against the Mission in the amount of \$3,050.00 for failing to comply with the January 9, 1984 inspection report. The Mission requested a hearing.

A hearing was held before Administrative Law Judge George Perselay on December 12, 1984. In its Brief and during arguments



the Mission urged that: (1) the Act violates the Religion Clauses of the First Amendment; (2) the Act violates the Mission's right to equal protection of the law; and (3) the Mission, as a nonprofit, religious institution, is not subject to the jurisdiction of the Bureau under the Act.

Judge Perselay issued an initial decision upholding the jurisdiction of the Bureau over the Mission. He declined to decide the equal protection and First Amendment issues raised by the Mission. In a Final Decision dated August 12, 1988, the Commissioner of the New Jersey Department of Community Affairs adopted Judge Perselay's initial decision.

On September 26, 1985, the Mission appealed to the Appellate Division of the Superior Court of New Jersey. In its briefs filed with the Appellate Division, the Mission raised the First Amendment, equal protection, and jurisdictional arguments raised below.

On April 23, 1987, the Appellate Division reversed the determination of the Commissioner of the Department of Community Affairs. *Market St. Mission v. Bureau of Rooming & Boarding House Standards*, 217 N.J. Super. 56 (1987). The Appellate Division held that the New Jersey Legislature did not intend the Act to apply to charitable, nonprofit organizations such as the Mission. The Court deemed it unnecessary to consider the constitutional issues raised by the Mission.

On May 12, 1987, the Bureau filed with the Supreme Court of New Jersey a Notice of Petition for Certification. That court granted certification to review the Appellate Division's decision on July 7, 1987. 108 N.J. 584 (1987).

By opinion dated May 19, 1988, the Supreme Court of New Jersey reversed the judgment of the Appellate Division. *Market*

*St. Mission v. Bureau of Rooming & Boarding House Standards*, 110 N.J. 335 (1988). The Court held that the New Jersey Legislature did not intend to exclude nonprofit, religious organizations from the Act. It also held that "facially [the Act] neither unduly interferes with the free exercise of religion nor creates an excessive state entanglement with religion." *Id.* at 110 N.J. 335. The Court did not address the Mission's equal protection argument. It remanded the matter to the Bureau "for reconsideration of the penalties." The Bureau then rescinded all penalties.

The Act, and Regulations promulgated thereunder, constitute a comprehensive scheme for state regulation of "boarding houses." The Act defines a "boarding house" as any building with two or more rooms designed to be occupied by one or more persons, where more than 15% of the residents remain for longer than 90 days. *N.J.S.A. 55:13B-3(a)*. Remuneration is not essential for a structure to be considered a "boarding house." Expressly exempted from coverage are hotels, motels, guest houses (wherein at least 85% of the units are utilized by residents remaining fewer than 90 days), foster homes, community residences for the developmentally and mentally disabled, school dormitories, facilities operated by, or under contract with, any state department or agency, and owner-occupied, one-family residential dwellings occupied by not more than 6 guests, where the primary purpose of the occupancy is to provide guests with charitable assistance. *N.J.S.A. 55:13B-3(a)*. There is no express exemption for religious institutions.<sup>2</sup>

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2. The Bureau freely admitted below that although the residential facilities of most religious institutions fall within the literal definition of a "boarding house," it has not sought to apply the Act or Regulations to convents, rectories, seminaries and monasteries.

The Act requires owners of boarding houses to be licensed by the Commissioner of the Department of Community Affairs. *N.J.S.A. 55:13B-7*. The Commissioner possesses the power to issue, suspend or revoke a facility's license. *N.J.S.A. 55:13B-4(c)*. *N.J.A.C. 5:27-1.6(f)* furnishes the Bureau with the discretion to refuse to issue a license if it "determines that the issuance of a license to such person would be contrary to the best interests of the residents of any rooming or boarding house or of the public generally."

The Act includes a "Bill of Rights" which confers a variety of rights upon boarding house residents. *N.J.S.A. 55:13B-19*. These include the right to practice the religion of the individual's choice, or to abstain from religious practices entirely, and to refuse to perform services for a licensee without an employment contract.

Extensive Regulations were promulgated by the Commissioner pursuant to authority granted in the Act. Many of these Regulations are totally incompatible to the Mission's purpose, directly interfere with the internal operation of the Mission's activities, and require extensive state intrusion.

For example *N.J.A.C. 5:27-3.3(c)* provides that a resident may not be evicted except for "good cause" as defined in *N.J.S.A. 2A:18-61.1 et seq.* (i.e., failure to pay rent, breach of the lease agreement, or injury to the landlord's property) and eviction procedures must follow the procedural requirements of the New Jersey Eviction Procedure Act, which by necessity require one month or more to accomplish.

*N.J.A.C. 5:27-3.2* requires licensees to establish "reasonable rules governing the conduct of persons" within the facility and authorizes the Bureau, at its discretion, to review these rules and "delete" those it finds "unreasonable." *N.J.A.C. 5:27-3.4* permits the Bureau to inspect each facility without prior notice. *N.J.A.C.*

5:27-3.3(a) prohibits employees and agents of licensees from engaging in any conduct which "tends to cause annoyance to any resident."

*N.J.A.C. 5:27-3.5* prohibits a licensee from accepting as a resident an individual "who is not ambulatory, . . . who is not free of communicable diseases . . . [or] who regularly requires supervision of self-administration of medication . . . ."

*N.J.A.C. 5:27-8.1* mandates that each boarding house maintain a file subject to review by the Bureau on each resident of the facility, including his name, next of kin, date of commencement of occupancy, a copy of his lease agreement and physician's certification as to the general state of the individual's health. The Bureau may also require the owner of a facility to submit monthly reports listing all payments made and received by the facility and mandate that the owner provide statements of its assets and net worth. *N.J.A.C. 5:27-8.2*.

Although *N.J.S.A. 55:13B-5(b)* authorizes the Commissioner to waive or modify the application of a Regulation to any facility, the provisions of the Act itself cannot be waived or modified. Moreover, any resident is authorized to commence an action against any boarding house for actual and punitive damages for any violation of the Act and Regulations.

### **THE QUESTIONS PRESENTED ARE SUBSTANTIAL**

Resolution of the constitutional issues will have importance far beyond the particular facts and parties involved in this case. It will affect many religious institutions in New Jersey which provide members with housing. The questions presented are also substantial because this Court has never analyzed the First Amendment and equal protection implications of a legislative enactment which regulates and interferes with religious institutions

which provide housing for members. Many recent First Amendment decisions have involved attempts to keep religion out of state sponsored activities. Few involve attempts to preserve religious activity from state intrusion. This appeal provides an opportunity for an analysis and exposition of this significant subject.

As in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Act and Regulations severely burden the Mission's exercise of religion.<sup>3</sup> Compliance with the Act would render the Mission helpless to enforce many rules of its self-contained religious community aimed at rehabilitating the spiritual, mental and physical needs of its beneficiaries. This inroad into the Mission's religious autonomy is best exemplified by the "Bill of Rights" provisions of the Act. These provisions, which cannot be waived, prohibit the Mission from requiring its beneficiaries to practice the Mission's doctrine, attend mandatory religious services or participate in its therapeutic work program, although these activities are an essential aspect of its mission. Moreover, a beneficiary could not be evicted for failing to abide by the Mission's religious tenets or residency requirements unless such failure is deemed by the state to constitute "good cause".

The Regulations permit the Bureau to review the "house rules" of the Mission and to delete rules it deems "unreasonable". The Bureau also possesses broad power to deny the Mission a license to operate. The Regulations prohibit the Mission from engaging in any conduct "which tends to cause annoyance to any resident" as defined by the state. They also prohibit the acceptance of residents who are "not ambulatory," "not free from communicable diseases" and "who regularly require supervision

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3. There has been no dispute that the religious beliefs of the Mission and its members are legitimate and sincerely held.

of self-administration of medication." Often these people are those most in need of the Mission's help.

These broadly drafted and often vague provisions destroy the Mission's absolute right to create and enforce its internal rules and tenets which are critical to the autonomous operation of its religious program.

The Mission's program is not secular. Rather, the operation of that program is central to its religious mission. The Act and Regulations severely burden the operation of this religious mission. They are unconstitutional as applied and on their face. The mere possibility of their enforcement chills the Mission's religious practices.

Of course, the State may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest. *Thomas v. Review Board*, 450 U.S. 707 (1980). However, the State has failed to choose the least intrusive means of satisfying that interest.

Below, the State emphasized the secular nature of fire safety provisions. However, only a small part of those provisions are related to fire safety.<sup>4</sup> The broad sweep of the Act and Regulations is clearly unnecessary for fire safety. No compelling State interests exist to support the bulk of the regulatory and statutory scheme which intrudes so violently into the Mission's goals and program and those of other religious institutions which provide housing to their members in the State of New Jersey. This intrusion is more acute with regard to organizations such as the Mission, Salvation Army and other religious rescue missions due to the nature of their programs and religious practices.

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4. Moreover, in 1983 New Jersey enacted the Uniform Fire Safety Act, *N.J.S.A 52:27D-192 et seq.*, ousting fire safety jurisdiction from the Bureau.



The Act and Regulations, facially and as applied, also violate the Establishment Clause. *Lemon v. Kurtzman*, 403 U.S. 602 (1971) enunciated the three-part test that has been applied by this Court in recent Establishment Clause cases. *See, Meek v. Pittenger*, 421 U.S. 349 (1975). First, the statute must have a secular legislative purpose. Second, it must have a "primary effect" that neither advances nor inhibits religion. Third, the statute and its administration must not foster "an excessive government entanglement with religion." The Act and Regulations fail the latter two tests.

The Bureau has utilized its authority to make distinctions between various religious institutions. The Bureau admitted it has not enforced the Act against convents, rectories, seminaries and monasteries. The distinctions drawn by the Bureau are on the basis of factors not found in the Act or Regulations and are unsupported by any objective standards. This Court has made it clear that the Establishment Clause mandates that one religious denomination cannot be preferred over another and that a law drawing distinctions on religious grounds must be strictly scrutinized. *Larson v. Valente*, 456 U.S. 228 (1982); *Gillette v. United States*, 401 U.S. 437 (1971).

The administration of the Act and Regulations by the Bureau has given a preferred status to certain denominations. This application imposes significant burdens on some religious organizations, including the Mission, while not on others. The benefit conferred by this exemption constitutes a substantial advantage given to convents, seminaries, rectories and monasteries. This administration cannot survive.<sup>5</sup>

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5. The discriminatory and selective enforcement of the Act and Regulations also violates the Equal Protection Clause.

The Act and Regulations also violate the Establishment Clause because they foster an excessive government entanglement with religion. The critical test is whether the involvement is excessive and continuing, calling for continued surveillance leading to an impermissible degree of entanglement. *Waltz v. Tax Commission*, 397 U.S. 664 (1969).

The Act and Regulations require the Bureau to become involved in a sustained and detailed administrative relationship with the Mission. For example, N.J.A.C. 5:27-3.3(c) provides that a resident may not be removed from the Mission except for "good cause." If the Mission sought to remove a resident for refusing to participate in mandatory religious services or imbibing alcoholic beverages, the Bureau would become involved in determining whether the rule was secular or religious and whether such rule was reasonable. This is precisely the type of inquiry prohibited by the First Amendment.

A similar entanglement would occur where the Bureau reviews the "house rules" of the Mission and, in its discretion, decides which rules are "unreasonable." This will result in excessive government entanglement and the chilling of religious activity.

This is also illustrated by N.J.S.A. 55:13B-5(b) which permits the Commissioner to "waive, modify or postpone" any Regulation where compliance with such Regulation "would result in undue hardship for residents of the facility" and such waiver would "not unreasonably jeopardize the welfare of residents or of the public at large."<sup>6</sup> The State would thus be compelled to engage in evaluating the religious validity of claims for exemptions. This evaluation of religious content and dogma is the exact entanglement that the Constitution forbids.

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6. The provisions of the Act itself cannot be waived.



The Mission is compelled to provide personal information concerning beneficiaries and could be required to file monthly financial reports. These also establish an excessive and continuing impermissible entanglement.

The Mission acknowledges its obligation to comply with regulations directed at secular activities. It has submitted to sanitary, food and fire inspections for years. However, the broad sweep of the Act invades the right of the Mission, and other religious institutions, to engage in evangelical activities free from excessive state intrusion. It is this very freedom which our society's founders sought to protect.

### CONCLUSION

For these reasons, the Court should note probable jurisdiction of this appeal.

Respectfully submitted,

RAND, ALGEIER, TOSTI,  
WOODRUFF & FRIEZE, P.C.  
*Attorneys for Appellant,*  
*Market Street Mission, Inc.*

By: \_\_\_\_\_  
GARY C. ALGEIER  
A Member of the Firm

Dated: August 15, 1988



APPENDIX A — OPINION OF THE SUPREME COURT OF  
NEW JERSEY DATED MAY 19, 1988

SUPREME COURT OF NEW JERSEY  
A-93 September Term 1987

MARKET STREET MISSION,

Respondent,

v.

BUREAU OF ROOMING AND BOARDING HOUSE  
STANDARDS, DEPARTMENT OF COMMUNITY AFFAIRS,  
STATE OF NEW JERSEY,

Appellant.

Argued February 29, 1988 — Decided May 19,  
1988

On certification to the Superior Court, Appellate  
Division, whose opinion is reported at 217 *N.J.*  
*Super.* 36 (1987).

*John J. Chernoski*, Deputy Attorney General,  
argued the cause for appellant (*W. Cary Edwards*,  
Attorney General of New Jersey, attorney; *Michael*  
*R. Clancy*, Deputy Attorney General, of counsel;  
*Mr. Chernoski* and *Daniel P. Reynolds*, Deputy  
Attorney General, on the briefs).

*Gary C. Algeier* argued the cause for respondent  
(*Rand, Algeier, Tosti, Woodruff & Frieze*,  
attorneys; *Mr. Algeier* and *John F. McDonnell*,  
on the brief).

*Appendix A*

The opinion of the Court was delivered by O'HERN, J.

The question in this case is whether the Legislature intended that the fire safety provisions contained in the Rooming and Boarding House Act of 1979 (the Act), *N.J.S.A. 55.13B-1 to -21*, apply to religious organizations that provide rooming and boarding facilities to the needy.

We hold that the State has the power to impose public safety requirements on organizations, both religious and secular, that provide such services. We also hold that the Legislature did not intend a wholesale exclusion of religious organizations from those requirements of the Act that would not intrude on the religious rights of the exclusions afforded from the Act's otherwise broad coverage indicate that the Legislature intended that the Act achieve its secular purposes without infringing on the constitutionally protected interests of the religious organizations. Hence, we reverse the Appellate Division's judgment that the Legislature did not intend any of the Act's provisions to apply to religious organizations. We remand this matter to the Bureau of Rooming and Boarding House Standards (Bureau) for further proceedings in accordance with this opinion.

I

Procedurally, the case arises from a 1984 inspection of the Market Street Mission by the Bureau, the agency then entrusted with the administration of the Act. The Bureau found several violations of fire safety regulations and ordered their abatement. Following a reinspection in May of 1984, the Bureau assessed a penalty against the Mission in the amount of \$3,050 for failure to comply with the earlier inspection report.

*Appendix A*

The Mission requested a hearing to contest the penalty and the jurisdiction of the Bureau. Although the Administrative Law Judge (ALJ) upheld the jurisdiction of the Bureau and the penalty imposed, he declined to decide the equal protection and free exercise of religion issues raised by the Mission. The Commissioner of the Department of Community Affairs (DCA) affirmed the ALJ's decision. On appeal, the Appellate Division reversed the Commissioner's decision and held that "the Act is inapplicable to the operation of a charitable non-profit organization such as the Mission." *Market St. Mission v. Bureau of Rooming and Boarding House Standards*, 217 N.J. Super. 56, 68 (1987).

The Appellate Division noted the broad powers that the Act grants to the Commissioner to promulgate regulations and to establish safety, service, and record-keeping standards. In particular, the court reviewed the Act's "Bill of Rights," N.J.S.A. 55:13B-17 to -21, which grants fifteen specific rights to all residents of rooming houses, boarding houses, and residential health care facilities. *Market St. Mission, supra*, 217 N.J. Super. at 63. One of the rights conferred by the Act is the freedom "[t]o practice the religion of [one's] choice, or to abstain from religious practice." N.J.S.A. 55:13B-19n. Another provision permits a resident to refuse to perform services for the institution except pursuant to a bona fide contract. N.J.S.A. 55:13B-19m.

The court found that many of the rights conferred by the "Bill of Rights" upon the residents of boarding houses "cover a variety of areas which are totally incompatible and entirely inapplicable to the Mission's purpose." 217 N.J. Super. at 69. The court also found that the Mission's purposes render inapplicable many of the regulations enacted by the Commissioner pursuant to the Act. *Id.* Those provisions permit the Bureau to oversee and to review the day-to-day operations of rooming and

*Appendix A*

boarding houses and would allow the Bureau to do such things as (1) "review the [Mission's] 'house rules' and void those it deems 'unreasonable,' " (citing *N.J.A.C.* 5:27-3.2), and (2) prevent the eviction of any resident except for "good cause" as defined in the Anti-Eviction Act, *N.J.S.A.* 2A:18-61.1 to 61.12, which governs landlord-tenant relations (citing *N.J.A.C.* 5:27-3.3(c)). 217 *N.J. Super.* at 64. The Appellate Division reasoned that "[t]he imposition of the requirements and regulations of the Act would inflict havoc upon those institutions which have been rendering not only social, moral, and religious services, but also a civil service in filling the gap which government has ignored for these many years." 217 *N.J. Super.* at 68.

The court also noted that the Act focused on commercial enterprises and did not specifically refer to charitable non-profit organizations that provide spiritual counseling and work programs to the homeless and to socially troubled individuals; it concluded that the Legislature did not intend the Act to apply to such organizations. The court thus held that an exemption for such religious non-profit institutions as the Mission was a fair and reasonable implication of the Act as written. 217 *N.J. Super.* at 68-69.

We granted certification to review that decision. 108 *N.J.* 584 (1987).

## II

For purposes of this appeal we accept the statement of facts set forth in the Mission's Appellate Division brief. The Market Street Mission was established approximately one hundred years ago. It occupies a three-story brick structure in downtown

*Appendix A*

Morristown and can house almost fifty residents. The Mission was formed in order to aid

the spiritual, mental, moral, and physical improvement of men, women and children by conducting a gospel rescue Mission \* \* \* to minister to the spiritual, moral, mental and physical needs of men, women and children, by the proclamation of the message of God's Saving Grace through the sacrificial and redemptive work of the Lord Jesus Christ on the Cross and by supplying food, shelter, clothing and other necessary comforts to the poor and needy.

The Mission receives no funds or aid from any governmental agency but funds its activities through the operation of a thrift store and through the generosity of private individuals and churches.

The policy of the Mission is set by a Board of Trustees and is implemented by an executive staff of officers. Each trustee and officer must subscribe to a Christian doctrinal statement requiring belief "in the Scriptures of the Old and New Testaments as fully inspired of God, and of Supreme and final authority in faith and life." Respondent states that "[t]he philosophy of the Mission is that through the word of God, a person can overcome [his or her] physical and spiritual problems." To present this message to those in need, the Mission opens its house on Market Street to all willing to put their faith in the Christian Gospel.

On entering the Mission, a client or beneficiary is expected to live on the premises for an initial period of ninety days.

*Appendix A*

Moreover, as a condition of residency, each client or beneficiary is required to abide by certain rules (e.g., to attend daily chapel services and weekly Bible classes, to abstain from consuming alcoholic beverages, and to take part in the Mission's therapeutic work program).

There are no leases at the Mission and the residents do not pay rent. Most have no source of income and would be unable to pay if the Mission were to charge rent. The Mission provides not only shelter but also food and clothing, at no cost to its residents.

In addition to attending mandatory religious services, residents are required to participate in the Mission's work program. Since the Mission views this program as restoring a worker's self-image, the residents are not paid for their work.

In short, the Mission operates a self-contained religious community to rehabilitate alcoholics (and others with similar problems), and

[t]he heart of the program is the gospel message that is found in the bible. We don't apologize for the fact that \* \* \* we have a cross at our main entrance. We have a sign that states twenty[-]four hours a day that Jesus saves and that's our basic philosophy, the christian gospel.

The State has no quarrel with the Mission's program; indeed, as freedom of religion represents the freedom that our society's founders primarily sought, it is the very essence of our ideals that the Mission be entirely free to spread its message that belief in divine principles can renew one's body and spirit. The State's



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only interest in the Mission, avowed again at oral argument, is that the Mission's structures meet the general requirements of public safety laws.

It cannot be doubted that religious institutions do not enjoy an absolute immunity from worldly burdens. *Prince v. Massachusetts*, 321 U.S. 158, 88 L.Ed. 645 (1944) (statute prohibiting sale of articles by minors in public place, held applicable to Jehovah's Witnesses). Thus, the Amish must nonetheless withhold, report, and pay Social Security taxes for their employees, although this disturbs their deeply held beliefs.

Not all burdens on religion are unconstitutional. The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.

[*United States v. Lee*, 455 U.S. 252, 257, 71 L.Ed.2d 127, 132 (1982) (citations omitted).]

In this as in so many other situations, a delicate balancing of secular and sacred interests is required. The Appellate Division eschewed any constitutional balancing because it concluded that the Legislature did not intend its regulations to govern the secular aspects of boarding facilities run by a religious group. We are unable to agree.

While the resolution of the constitutional question is not without difficulty, we cannot avoid this issue merely by disregarding the seemingly plain scope of the statute. Under New Jersey law a challenged statute will be construed to avoid constitutional invalidity if the provision is "reasonably susceptible to such interpretation." *State v. Profaci*, 56 N.J. 346, 350 (1970).

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Our standard for construing statutes of uncertain constitutionality closely resembles the principle of construction adopted by the dissent in *National Labor Relations Bd. v. Catholic Bishop of Chicago*, 440 U.S. 490, 510, 59 L.Ed.2d 533, 547-48 (1979), that statutes should be construed if fairly possible to avoid questions of religious entanglement. But even were we to accept the broader standard elaborated by the *Catholic Bishop* majority, i.e., that interpretations of a statute that would give rise to serious constitutional questions should be rejected unless compelled by the "affirmative intention of the Congress clearly expressed," *id.* at 506, 59 L.Ed.2d at 545 (citation omitted), we would still find that the New Jersey Legislature intended its licensing statutes to apply to this rooming and boarding house.

The Legislature's intent is clear and unambiguous. The Rooming and Boarding House Act of 1979 was prompted by "a number of boarding home[] \* \* \* fires which resulted in fatalities, and [which attracted] public attention \* \* \* to the conditions that existed in these facilities." G. Gordon and D. Lazarus, "New Jersey's Rooming and Boarding House Act: Its Effects and Effectiveness," 12 *Seton Hall L. Rev.* 484, 492 n.63 (1982). Among the Legislature's findings were that

[t]he residents of such facilities are predominantly elderly, disabled and poor, many of whom need social, personal and financial services, *protection from building hazards* and protection from unscrupulous and predatory neighbors\* \* \*.

This remedial legislation is therefore necessary to provide for the health, safety and welfare of all those who reside in rooming and boarding houses in this State \* \* \*.

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[*N.J.S.A. 55:13B-2.*]

A rooming house exists where there are two or more units of dwelling space arranged or intended for single room occupancy (exclusive of any such unit occupied by an owner or operator) and where more than fifteen percent of those occupants reside for more than a limited tenure. *N.J.S.A. 55:13B-3h; N.J.S.A. 55:13B-3a.* Payment of monies from the residents to the operator is not an element of jurisdiction. *N.J.S.A. 55:13B-11.1e.*

The Act specifically excludes the following facilities from the category of rooming houses: foster homes; community residences for the developmentally disabled or the mentally ill; student dormitories owned or operated by non-profit institutions of primary, secondary, or higher education; other buildings arranged for single-room occupancy and occupied exclusively by full-time students at approved institutions; and, upon the written authorization of the DCA's Commissioner, any facility or living arrangement operated by, or under contract with, any State department or agency. *N.J.S.A. 55:13B-3a.*

A 1985 amendment demonstrates the Legislature's intent to maintain the broad sweep of the Act, beyond the purely commercial milieu: the amendment specifically excludes from the scope of the Act premises owned or occupied by non-profit or religious core organizations in which an owner-occupied one-family dwelling is made available for charitable purposes to not more than six guest occupants and where the owner derives no income from the occupancy of the premises. *N.J.S.A. 55:13B-3a.* As stated by the Assembly Committee,

[t]he bill [was] prompted, according to the sponsor's statement, by incidents of "individuals

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who, for charitable reasons, have taken the needy into their homes” and who have thereupon been “declared to be operating boarding homes . . . and subject to the licensing requirements of the act and the regulations promulgated thereunder . . . an undue burden upon these individuals.”

[Assembly Housing and Urban Policy  
Committee Statement, Senate No. 2697 - L. 1985,  
c. 364.]

This amendment would have been unnecessary if the Legislature had originally intended the Act not to include all boarding facilities owned by religious or non-profit associations or corporations.

We find that the legislative history confirms that the Legislature would have intended the statute to extend as far as its constitutional reach would permit. *See Maressa v. New Jersey Monthly*, 89 N.J. 176, cert. denied, 459 U.S. 907, 74 L.Ed.2d 169 (1982). This is not a direct regulation of speech or of the exercise of religion, where overbreadth would be fatal. *See State v. Cameron*, 100 N.J. 586, 599 (1985) (municipal zoning ordinance excluding “churches and similar places of worship” from residential use district found unconstitutionally vague).

## III

In sum, we cannot conclude that the Legislature intended to exclude religious organizations from the Rooming and Boarding House Act. We suspect that had there been a fatal fire at a religious boarding house, society would not have shrugged its shoulders and concluded that the tragedy was of no moment since it had befallen a religious shelter. The State’s legitimate concern for safety

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need not end at the shelter's door..

The establishment clause proscribes excessive entanglement and permits only minor and unobtrusive State supervision of religiously oriented affairs. The regulatory scheme cannot require such "comprehensive, discriminating and continuing state surveillance" as would constitute entanglement. *Lemon v. Kurtzman*, 403 U.S. 602, 619, 29 L.Ed.2d 745, 759 (1971). We are confident that the Bureau will pursue the least restrictive means to achieve the State's overriding concern. At this juncture we need not invalidate the Act's general requirements merely because they may be amenable to an unconstitutional application.

It has not been the Court's practice, in considering facial challenges to statutes of this kind, to strike them down in anticipation that particular applications may result in unconstitutional [action].

[*Roemer v. Board of Pub. Works of Maryland*, 426 U.S. 736, 761, 49 L.Ed.2d 179, 196 (1976).]

*See also IMO Application of Maria Martin*, 90 N.J. 295 (1982) (Casino Control Commission's licensing applications for casino employees do not facially violate constitutional rights of freedom of association, privacy, freedom from unreasonable searches and seizures, or privilege against self-incrimination).

Of course, should the Bureau exercise its discretion in a manner that unnecessarily intrudes into the Mission's religious affairs, we shall promptly reconsider the matter. "It is worth remembering that the forefathers of many of us came to these shores to escape, among other things, government regulation of

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their forms of worship." *State v. Cameron, supra*, 100 N.J. at 609-10 (Clifford, J., concurring). Government has more than enough legitimate opportunities to exercise its police power than to squander that power in the needless regulation of religious organizations providing the most fundamental of human needs, shelter and care, to the less privileged of our society.

We find that the State's program for licensing rooming and boarding houses applies to sectarian institutions and that facially it neither unduly interferes with the free exercise of religion nor creates an excessive State entanglement with religion. At the same time, we recognize the good faith with which the Market Street Mission has pursued its appeal. We note that the State has the power to reconsider the imposition of any penalties assessed during the pendency of these proceedings. We were informed at oral argument that the housing defects have been cured.

The judgment of the Appellate Division is reversed. The matter is remanded to the Bureau for reconsideration of the penalties.

Chief Justice Wilentz and Justices Handler, Garibaldi, and Stein join in this opinion. Justices Clifford and Pollock did not participate.

**APPENDIX B — OPINION OF SUPERIOR COURT OF NEW  
JERSEY, APPELLATE DIVISION DATED APRIL 23, 1987**

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-401-85T1

MARKET STREET MISSION,

Petitioner-Appellant,

v.

BUREAU OF ROOMING AND BOARDING HOUSE  
STANDARDS, DEPARTMENT OF COMMUNITY AFFAIRS,  
STATE OF NEW JERSEY,

Respondent-Respondent.

Submitted November 19, 1986 — Decided April  
23, 1987

Before Judges King, Deighan and Muir.

On appeal from a final decision of the  
Commissioner, Department of Community  
Affairs.

Rand, Algeier, Tosti, Woodruff & Frieze, attorneys  
for appellant (Gary C. Algeier, of counsel; Leonard  
J. Artigliere, on the brief).

W. Cary Edwards, Attorney General of New  
Jersey, attorney for respondent (John J.  
Chernoski, Deputy Attorney General, on the brief).



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The opinion of the court was delivered by

DEIGHAN, J.A.D.

On this appeal we are required to determine whether the Rooming and Boarding House Act, *N.J.S.A. 55:13B-1 et seq.*, applies to petitioner, a religious rescue mission in Morristown which provides, free of charge, food, shelter, and therapeutic programs for recovering alcoholics and drug addicts. The Commissioner of the Department of Community Affairs (Commissioner) held that the Act was intended to include non-commercial multiple residences such as that operated by Market Street Mission as boarding houses. For reasons stated below, we reverse.

In January 1984 the Bureau of Rooming and Boarding House Standards (Bureau) an agency within the Department of Community Affairs (Department), inspected the Market Street Mission (Mission) in Morristown. As a result of its inspection, the Bureau issued a report noting a series of fire hazards in violation of Department regulations. The Commissioner ordered that violations be abated by March 9, 1984. Upon reinspection on March 12, 1984, the Bureau found that the Mission had not abated the cited violations. Consequently, the Commissioner assessed a penalty of \$250 for each of 12 violations, and \$50 for another violation, for a total penalty of \$3,050. The Mission filed an administrative appeal challenging the Bureau's jurisdiction and the Act's applicability to a nonprofit, religious corporation such as the Mission.

The matter was assigned to an Administrative Law Judge (ALJ) as a contested case. On January 12, 1985, subsequent to a hearing, the ALJ issued his decision determining that: (1) he



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had no jurisdiction to determine the constitutionality of the statute and regulations involved; (2) the statute and regulations are not unconstitutional as applied to the Mission; (3) religious institutions are subject to police powers of the State when related to the safety and welfare of the public; (4) the application of *N.J.S.A. 55:13B-1 et seq.* to the Mission is not an interference with nor prohibited by the free exercise of religion and (5) the penalty imposed was reasonable.

The Commissioner adopted the ALJ's decision but modified it by waiving the penalty on the condition that "within 30 days of receipt of this decision, the petitioner files an application for licensure, enters into an agreement with the Bureau to establish a schedule for the abatement of all violations and proceeds diligently to abate all violations directly related to life safety." The Mission did not accept the Commissioner's conditions and appealed to this court. We granted the Mission's motion to supplement the record with affidavits from employees and one resident concerning the Mission's purpose and programs and the effect of the Act as precluding the existence of the Mission.

## I

The facts, many of which were stipulated before the ALJ, are substantially undisputed. The Mission was established 97 years ago and in 1933 was incorporated as a nonprofit corporation. Its purpose as stated in the certificate of incorporation is to foster

the spiritual, mental, moral and physical improvement of men, women and children by conducting a gospel rescue Mission . . . to minister to the spiritual, moral, mental and physical needs of men, women and children, by the proclamation

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of the message of God's Saving Grace through the sacrificial and redemptive work of the Lord Jesus Christ on the Cross and by supplying food, shelter, clothing and other necessary comforts to the poor and needy.

The Mission is tax exempt under the Internal Revenue Code. It is funded partially through profits from a thrift store which is manned by its beneficiaries. The remainder of its funds are donations from churches and individuals. No money is received from the State or federal government.

The Mission is located in a three-story brick building in Morristown, containing sleeping and living facilities for about 50 residents who are housed in bedrooms in the basement, second and third floors.

It is a religious organization devoted, in part, to spreading the gospel to the underprivileged and others rejected by society. It is the Mission's belief that man's social problems and handicaps can be treated by attending to his spiritual, moral, mental, and physical needs. The beneficiaries of the Mission are persons who reside and eat at the premises, who are socially troubled, and who attend a program of rehabilitation which includes spiritual counselling and work therapy to overcome their social handicaps. The Mission, through its staff and volunteers, attempts to rehabilitate these individuals by attending to their physical, social, and spiritual needs.

The principle function of the Mission is the rehabilitation of alcoholics and in some instances drug addicts. Its clients are unemployed, homeless "street" persons, most of whom have no

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income. Upon entering the Mission, a beneficiary is required to live on the premises and to remain for an initial 90-day program. As a condition of residency, each beneficiary is required to comply with certain rules which require *inter alia*: attendance at daily chapel services and at least three bible classes a week; abstinence from alcoholic beverages, and participation in the Mission's therapeutic program. The beneficiaries are not paid for their services because the work requirement is a part of the therapy program to restore their confidence and self assurance. Food, shelter and clothing are provided to the beneficiaries at no cost. There are no leases or any type of agreements with the beneficiaries to pay any rent or consideration for shelter. In any event, most beneficiaries have no source of income and would be unable to pay for food, shelter or clothing.

The Mission presented testimony and affidavits of its staff members and a resident. At the hearing the executive director of the Mission explained the Mission's philosophy:

Our philosophy is that there are many individuals who are in need of help in their lives and we believe the christian gospel is the way to, to answer that need. Since its inception almost ninety six years ago this has been the basic philosophy of the mission. We do have mostly men who have been addicted to strong drink, occasionally we get some . . . addicted to other types of drugs, but generally speaking people that come to us have had their lives somewhat ruined by the abuse of alcohol, and our philosophy is that by preaching of, of the word, teaching of the word of God, the Bible, we can help people to, to overcome this particular problem that they have in their lives and hopefully

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restore them as useful citizens of society.

On this appeal the Mission raises the following issues: (1) the Legislature did not intend to include the Mission within the purview of the Rooming and Boarding House Act; (2) as applied to the Mission, the Act and regulations impose impermissible burdens on the free exercise of religion; (3) application of the Act to the Mission would excessively and impermissibly entangle the State in religious affairs, and (4) the Act and the bureau's administration of the Act violate equal protection guarantees.

## II

The Mission first contends that the Rooming and Boarding House Act of 1979, *N.J.S.A. 55:13B-1 et seq.*, by its terms does not, nor is it intended to, apply to non-profit, religious institutions such as the Mission. Consequently, the Mission concludes that the Bureau has no jurisdiction over it. In essence, the Mission contends that the Act is applicable only to commercial boarding houses and not charitable non-profit organizations. Accordingly, it is necessary to analyze the Act, its purpose and history to determine its applicability to the objectives and activities of the mission.

The purpose of the Rooming and Boarding House Act of 1979, *N.J.S.A. 55:13B-1 et seq.*, in part, is to provide "for the health, safety and welfare of all those who reside in the rooming and boarding houses." *N.J.S.A. 55:13B-2*. The Act also aims to protect the interests of the boarding home industry and to encourage them "to remain in the business". Summary, *Statement to Senate, No. 3111, Senate Institutions, Health and Welfare Committee* at 2-3. Excluded from the Act are foster homes, community residences for the developmentally disabled,

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dormitories owned or operated by non-profit institutions of primary, secondary, or higher education used by students and facilities occupied exclusively by full-time students. *N.J.S.A.* 55:13B-3(a). Also excluded from the scope of the Act, effective November 12, 1985, are premises owned or operated by a non-profit or religious corporation or association in which an owner-occupied one-family dwelling is made available to not more than six guests for charitable purposes and where the owner derives no income from the use of the premises. *N.J.S.A.* 55:13B-3(a) *L.* 1985, c. 364, §1.<sup>1</sup>

The Act was adopted in response to the Legislature's perception that residents of unregulated boarding houses in New Jersey were being endangered by unsafe facilities, inadequate services, and greedy, dishonest owners. Gordon and Lazarus, "New Jersey's Rooming and Boarding House Act: Its Effects and Effectiveness," 12 *Seton Hall L. Rev.* 484 (1982). One of the Act's main premises is that the residents of such homes "are predominantly elderly, disabled and poor," and are thereby in special need of protection by the State. *N.J.S.A.* 55:13B-2.

The Act empowers the Commissioner of the Department to promulgate regulations and establish safety, security, service, living, and record-keeping standards for rooming and boarding houses; suspend or revoke licenses; inspect any rooming and boarding house without prior notice; review facility records; establish standards for the construction and conversion of

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1. The "Rooming and Boarding House Act of 1979," *P.L.* 1979, c. 496 (*C.* 55:13B-1 *et seq.*) was amended to exempt from coverage under the act owner-occupied, one family residential dwellings made available for occupancy by guests where the primary purpose of the occupancy is to provide charitable assistance to the guests and where the owner derives no profit from the occupancy. The maximum number of such guests is limited to six.

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facilities; issue subpoenas compelling attendance and the production of documents at hearings, and enforce the provisions of the Act through administrative and judicial proceedings. *N.J.S.A. 55:13B-4*. In addition, the Act directs the Commissioner to establish standards ensuring that all rooming and boarding houses are operated and constructed in a manner that will "protect the health, safety and welfare of its residents and at the same time preserve and promote a homelike atmosphere." *N.J.S.A. 55:13B-6*.<sup>2</sup>

As a supplement to the Act, the Legislature enacted a Boarding Facility's Bill of Rights. *N.J.S.A. 55:13B-18 to 21*. This statute sets forth 15 rights of every resident of rooming houses, boarding houses, and residential health care facilities. It provides that upon admission to any facility, the owner shall supply the resident with a copy of the rights listed in the Act. *N.J.S.A. 55:13B-20*. The law also provides a private right of action for residents whose rights have been violated. If the resident prevails in this action, he is entitled to recovery of attorneys' fees and costs. *N.J.S.A. 55:13B-21*.

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The Mission does not deny that it is within the literal

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2. In accordance with the legislative mandate the Commissioner has promulgated numerous regulations: *N.J.A.C. 5:27-1.1 et seq.* These regulations are divided into 12 subchapters: Administration and Enforcement, *N.J.A.C. 5:27-1.1 to 1.2*; Definitions, *N.J.A.C. 5:27-2.1*; Rights of Residents, *N.J.A.C. 5:27-3.1 to 3.12*; General Building Requirements, *N.J.A.C. 5:27-4.1 to 4.9*; Fire Safety, *N.J.A.C. 5:27-5.1 to 5.9*; Security, *N.J.A.C. 5:27-6.1 to 6.3*; Residents' Comfort, *N.J.A.C. 5:27-7.1 to 7.4*; Maintenance of Records, *N.J.A.C. 5:27-8.1 to 8.4*; Food and Laundry Services, *N.J.A.C. 5:27-9.1 to 9.5*; Other Personal Services, *N.J.A.C. 5:27-10.1 to 10.6*; Financial Services, *N.J.A.C. 5:27-11.1 to 11.7* and Fire Safety Loans [sic], *N.J.A.C. 5:27-12.1 to 12.3*.



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classification of a boarding house as defined in *N.J.S.A. 55:13B-3a*, but asserts that beyond its literal terms, the Act is to encompass "only commercially operated boarding houses where an operator seeking profits might abuse (mentally, financially and emotionally) the residents of such homes." It notes that the Mission charges no rent and is "a self-contained religious community" which depends upon residents' willingness to participate in religious services and instruction. Further, the Mission points to *N.J.S.A. 55:13B-19n*, which allows residents "to practice the religion of (their) choice or to abstain from religious practices." It argues that this requirement is incompatible with the Mission's purpose which requires residents to participate in the Mission's religious and "therapeutic work program" without pay, "as part of its program to restore a person's self-image." The Mission also finds patent incompatibilities in the record-keeping and monitoring powers of the bureau. For example, under *N.J.A.C. 5:27-3.2* the bureau may review the "house rules" and void those it deems "unreasonable." The Mission contends that "requiring a religious institution to maintain records of its expenditures for inspection by the State would clearly violate the First Amendment, as would extending the power of the State to determine whether a religious institutions [sic] rules are 'reasonable' "

The Mission further notes that the regulations permit a resident to be evicted only under the procedures mandated by the Anti-Eviction Act, *N.J.S.A. 2A:18-61.1 et seq.*, which governs landlord-tenant relations. *N.J.A.C. 5:27-3.3(c)*. Because of this requirement, the Mission proposes that the Act is intended to apply only where residents pay rent in return for the services provided.

For all of these reasons the Mission concludes that the Act

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is irreconcilable with charitable non-profit religious institutions such as that maintained by the Mission. It reasons that the Act could not possibly have been intended to include the purposes and objectives of the Mission within the literal meaning of the statute.

### IV

In interpreting a statute, primary regard must be given to the fundamental purpose for which the legislation was enacted. *N.J. Builders, Owners & Managers Association v. Blair*, 60 N.J. 330, 338, (1972). Where a literal reading will lead to a result not in accord with the essential purpose and design of the Act the spirit of the law will control over the letter of the law. *Ibid.* The meaning of the statute is to be gathered from the object and nature of the subject matter, the contextual setting, and the mischief sought to be eliminated as well as the proposed remedy. *Brewer v. Porch*, 53 N.J. 167, 174 (1969); *San-Lan Builders Inc. v. Baxendale*, 28 N.J. 148, 155 (1958). It is not the words but the internal sense of the Act that controls; reason being the soul of the law. *Ibid.* In this respect, policy consideration is the key to interpretation as to the purpose, equity or spirit of the statute. *In re Röache*, 16 N.J. 579 (1954).

The legislative history of an Act and contemporaneous construction of other laws pertaining to similar subject matter may furnish important light as to the purpose and plan of the legislature. *N.J. Pharmaceutical Ass'n. v. Furman*, 33 N.J. 121, 130 (1960); *Key Agency v. Continental Cas. Co.*, 31 N.J. 98, 103 (1959). Statements appended to Bills are useful aids to ascertain legislative intent, *Howard Savings Inst. v. Kielb*, 38 N.J. 186, 195 (1962), as are reports and comparable documents evidencing legislative purpose. *Dumont Lowden, Inc. v. Hansen*, 38 N.J. 49, 56 (1962).



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When the natural or literal meaning of statutory language embraces applications which would not serve the policy or purpose for which the statute was enacted or help to remedy the mischief at which it was aimed, the courts may construe it restrictively in order not to give it an effect beyond its equity or spirit. 2A *Sutherland Stat. Const* (4th ed. 1984) §54.06 at 582 citing *De Fazio v. Haven Savings & Loan Ass'n.*, 22 N.J. 511 (1956). Where there is doubt as to the extent of inclusiveness of a statute, it will be construed to apply only so far as is needed to remedy the perceived mischief. 2A *Sutherland*, *supra* §54.04 at 570, citing *State v. K-Mart*, 134 N.J. Super. 76 (Cty.Ct.1975), *aff'd*, 141 N.J. Super. 546 (App.Div. 1976). If the literal import of the text of an act is inconsistent with the legislative meaning, the words of the statute will be modified to agree with the intent of the Legislature. 2A *Sutherland*, §46.07 at 110, citing *Restaurant Enterprises, Inc. v. Sussex Mutual Ins. Co.*, 52 N.J. 73 (1968).

In view of the foregoing principles of construction and interpretation of statutes, it is necessary to reassess and analyze the purpose, plan, history and remedy of the Act. The *Statement to Senate Bill No. 3111*, *supra*, recites some general purposes of the Act. As noted earlier, the Act provides "for the health, safety and welfare of persons residing in rooming and boarding houses." The Statement also expresses interest in the boarding room "industry" and notes that the Act seeks to avoid "misguided legislation and burdensome rules [which may] force boarding home owners to close up and try some other *business*." (emphasis supplied) *Id.* at 2. It notes that "the Committee has tried to make sure that there will be sufficient incentives for rooming houses . . . to stay in *business* and even grow in number," particularly those "facilities run by small-time owners who manage to maintain warm, family-like residences. *Id.* at 3. (emphasis supplied).

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The focus of the Act, obviously, is upon commercial enterprises with no reference to charitable non-profit organizations which are concerned solely with rehabilitation of homeless and socially troubled individuals through spiritual counselling and work programs. At public hearings concerning the problems of Boarding and Rooming houses, there was no mention made or consideration given to religious missions or other homes, where the beneficiaries do not pay for the services. See *Public Hearing Before the N.J. Senate Committee on Institutions, Health and Welfare on Recommendations to Curb Boarding House Problems and Abuses* (July, 1978).

*The Report of the Commissioner of Health's Advisory Committee on Boarding Homes* (February 1978) was concerned with the following problems requiring legislation: "overcrowding, filthy rooms, lack of fire escapes and other safety equipment, faulty wiring, non-existent or inadequate food service, and fraudulent use of residents' funds." *Id.* at 27. Further, it listed the two principal funding sources for boarding homes: (1) "private paying individuals" and (2) public funded residents, who pay via SSI and Medicaid." *Id.* at 22. Charitable organizations such as the Mission are not funded through either source.

*The Report and Recommendations of the State of New Jersey Commission of Investigation on Abuses and Irregularities in New Jersey's Boarding Home Industry* (November 1978) (*SCI Report*) expressed a concern "for the human beings who are being victimized by the system. These are the boarding home residents whose personal misfortunes have made them particularly vulnerable to exploitation by certain boarding home operators." *Id.* at 8. The *SCI Report* "revealed an insensitivity on the part of many in the industry to the most elementary personal needs of the occupants of these facilities." *Id.* at 9. Certainly the Mission

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has not "victimized", "exploited" nor has it been "insensitive" to the personal needs of its residents. On the contrary, it has donated its services, food, shelter and clothing to its beneficiaries without charge with a view to rehabilitation.

The *SCI Report* concluded that

[o]nly under adequate governmental supervision and surveillance can a proper balance be achieved between the *legitimate profit* motivations of boarding home operators and their equally essential obligations to serve the more fragile boarders among their clientele. [*Id.* at 228; emphasis supplied].

The Mission has no "profit motivations" and it is eminently aware of its "essential obligation" to the underprivileged and homeless persons rejected by society. The Mission undertakes to fill a gap in the needs of society to care for those unfortunate persons who are homeless, without friends or relatives and to rehabilitate a class of socially handicapped persons who wander aimlessly and hopelessly through the streets on a day-to-day existence.

The problem of homeless individuals, as well as families, has just recently become a public concern.<sup>3</sup> Both local and federal governments have been slow to recognize the plight of these unfortunate individuals, a problem which institutions such as the Mission have been dealing with for decades. The imposition of the requirements and regulations of the Act would inflict havoc

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3. For a discussion of state, local and federal response to this problem, see *Maticka v. The City of Atlantic City*, \_\_\_\_ N.J. Super. \_\_\_\_ (App. Div. 1987) (slip opinion February 3, 1987).

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upon those institutions which have been rendering not only social, moral and religious services, but also a civil service in filling the gap which government has ignored for these many years.

From the object, nature of the subject matter, contextual setting, mischief sought to be eliminated, proposed remedy and history of the Rooming and Boarding House Act, *N.J.S.A. 55:13B-1 et seq.*, we find the Act is inapplicable to the operation of a charitable non-profit organizations such as the Mission. The Act is restricted solely to commercial enterprises operating boarding houses and inapplicable to charitable non-profit organizations offering their services without charge to homeless and socially handicapped persons. "[L]aws and regulations should be interpreted in a reasonable and common sense manner bearing in mind that overly strict enforcement might force the shelter to close, leaving its occupants in a far worse state than remaining in a . . . shelter [which is not in compliance with statutory regulations.]" *St. John's Evangelical Lutheran Church v. Hoboken*, 195 *N.J. Super.* 414, 421 (Law Division 1983). Imposition of the literal terms of the Act on an institution such as the Mission would frustrate the Mission's expressed purpose and discourage such institutions from taking care of unfortunate, underprivileged and socially handicapped persons.

## V

In reaching this determination, we are mindful of the need to see that the Mission meets with general health and safety code requirements. The Department, in its brief, notes that many of the Rooming and Boarding House Act requirements, particularly those for which the Mission was cited, relate only to health and safety objectives. The Department concedes the right of the Mission to promote its religious work but contends that 'the

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activity of teaching a religious doctrine to socially handicapped persons cannot be equated with every aspect of the activity required to house, feed and clothe the persons on an around-the-clock basis for purposes of the First Amendment." The Department contends that the Act is only concerned with the latter activity to insure that the Mission meets general health and safety requirements. We disagree.

On the contrary, the regulations promulgated by the Commissioner pursuant *N.J.S.A. 55:13B-1* and the *Boarding Facility's Bill of Rights, N.J.S.A. 55:13B-18 to 20* cover a variety of areas which are totally incompatible and entirely inapplicable to the Mission's purpose. Specifically *N.J.S.A. 55:13B-6* requires the Commissioner to establish standards, in addition to fire and safety requirements, regarding:

. . . (e) protection from harassment, fraud and eviction without due cause; (g) adequate personal and financial services rendered in boarding houses; (h) disclosure of owner identification information; (i) maintenance of orderly and sufficient financial and occupancy records; . . . (k) assurance that no constitutional, civil or legal right will be denied solely by reason of residence in a rooming or boarding house; . . . (m) opportunity for each resident to live with as much independence, autonomy and interaction with the surrounding community as he is capable of.

Further, *N.J.S.A. 55:13B-19*, provides that:

Every resident of a boarding facility shall have the right: (a) to manage his own financial affairs; (b)

*Appendix B*

to wear his own clothing; (c) to determine his own dress, hair style, or other personal effects according to individual preference; (d) to retain and use his personal property in his immediate living quarters, so as to maintain individuality and personal dignity, except where the boarding facility can demonstrate that such would be unsafe, impractical to do so, infringes upon the rights of others and that mere convenience is not the facility's motive to restrict the right; . . . (f) to unaccompanied access to a telephone at a reasonable hour and to a private phone at the resident's expense; (g) to privacy; (h) to retain the services of his own personal physician at his own expense or under a health care plan and to confidentiality and privacy concerning his medical condition and treatment; (i) to unrestricted communication, including personal visitation with any person or his choice, at any reasonable hour; (j) to make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which he is capable; (k) to present grievances on behalf of himself or others to the operator, State governmental agencies or other persons without threat of reprisal in any form or manner whatsoever; (l) to a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident; (m) to refuse to perform services for the boarding facility, except as contracted for by the resident and operator; (n) to practice the religion of his or her choice, or to abstain from religious



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practice; and (o) to not be deprived of any constitutional, civil or legal right solely by reason of residence in a boarding facility. *Id.*

These standards are so disparate with the operation of a non-profit charitable religious institution as maintained by the Mission so as to evidence an intent that the statute and its regulations are inapplicable. Many of these standards are necessary for the orderly and efficient operation of profit-making business concerns of which the Mission is not. The rest of these standards have the effect of requiring the rooming and boarding home industry to protect and respect, at least minimally, the dignity, independence, individuality and private rights of their residents which are often overlooked or pushed aside as rooming and boarding home operators strive to achieve their ultimate objective of running a profitable business. These standards are necessary in the regulation of the rooming and boarding home industry because the legitimate profit-making objectives of the industry can conflict with the maintenance of these standards. They are inapplicable and unnecessary for the regulation of institutions such as the Mission because the Mission has as its very purpose the promotion and development of human dignity. The Mission's objectives do not conflict with the standards set forth in the Act. To the contrary, the Mission achieves these objectives to a greater degree than compliance with the Act would require.

We recognize that the Supreme Court has repeatedly held that religious organizations must comply with fire, building and health regulations. *Lemon v. Kurtzman*, 403 U.S., 603, 614, 91 S.Ct. 2105, 2112, 29 L.Ed.2d 745, 756-757 (1971); *Tony and Susan Alamo Foundation v. Sec. of Labor*, 471 U.S. \_\_\_, \_\_\_, 105 S.Ct. 1953, 1964, 85 L.Ed.2d 278, 291 (1985). Although the regulations promulgated by the Department, N.J.S.A. 5:27-6.1

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*et seq.*, deal, in part, extensively with building maintenance, fire safety, building security, general health matters, and safety codes, we are satisfied that these "secular" requirements of the statute and regulations are adequately regulated by existing statutes and ordinances relating to fire, building and health regulations and requirements. In this respect, as we noted earlier, foster homes, community residences for the developmentally disabled, dormitories owned or operated by non-profit institutions of primary, secondary, or higher education used by students, facilities occupied exclusively by full-time students, and premises owned or operated by a non-profit or religious corporation or association in which an owner-occupied one-family dwelling is made available to not more than six guests for charitable purposes and where the owner derives no income from the use of the premises, *N.J.S.A. 55:13B-3(a)*, are excluded from the Act. These facilities likewise are regulated by other governmental agencies or secular rules and regulations. Further, we note that non-profit homes for the aged, which are more typical of proprietary homes, appear to have better facilities and services than predominantly public ones. *Report of the Commissioner of Health's Advisory Committee on Boarding Homes, supra* at 22.

The determination of the Commissioner of the Department of Community Affairs entered May 31, 1984 is reversed and the total penalty against Market Street Mission in the sum of \$3,050. is vacated. In view of the foregoing we deem it unnecessary to consider the remaining issues raised by the Mission.

(Stamped) — I hereby certify that the foregoing  
is a true copy of the original in file  
in my office.

s/ John J. (illegible)  
Acting Clerk



APPENDIX C — INITIAL DECISION OF THE STATE OF  
NEW JERSEY, OFFICE OF ADMINISTRATIVE LAW DATED  
AUGUST 12, 1985

STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW

MARKET STREET MISSION,

*Petitioner,*

vs.

BUREAU OF ROOMING AND BOARDING HOUSE  
STANDARDS,

*Respondents.*

INITIAL DECISION  
OAL DKT. NO. CAF 8072-84  
AGENCY DKT. NO. 84-756-RB/1424C0024

Willard Bergman, Esq., for petitioner  
(Schenck, Price, Smith & King, attorneys)

John J. Chernoski, Deputy Attorney General, for respondent  
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed: May 31, 1985

Decided: July 12, 1985

BEFORE GEORGE PERSELAY, ALJ:

### Appendix C

The petitioner appeals from the Commissioner's notice of Statutory Violation and Order To Pay penalty in the amount of \$3050, following an inspection of its premises which houses approximately 47 persons. The petitioner appeals on the grounds that the petitioner's premises are not subject to the jurisdiction, nor did the Legislature intend to include such premises, under *N.J.S.A. 55:13B-1 et seq.* Petitioner contends that its sole purpose and mission is religious in nature.

### PROCEDURAL HISTORY

After inspection and reinspection of petitioner's premises, the respondent caused to be issued a Commissioner's Notice of Statutory Violation and Order to Pay Penalty which was served on respondent May 7, 1984. The respondent requested a hearing by letter of counsel dated May 17, 1984. Attempts to settle the differences between the parties were unsuccessful and the matter was forwarded to the Office of Administrative Law as a contested case pursuant to *N.J.S.A. 52:14B-1 et seq.* and *N.J.S.A. 52:14F-1 et seq.* on October 31, 1984 and docketed November 1, 1984. A hearing scheduled for November 27, 1984 was adjourned at the request of the petitioner and a hearing was held December 12, 1984. Posthearing submissions were received and the record closed.

### ISSUES

The issues in this case as framed by the stipulations, evidence and posthearing submissions are:

1. Is the petitioner subject to the jurisdiction of the respondent under the provisions of the Rooming and Boarding House Act of 1979, *N.J.S.A. 55:13B-1 et seq.*?

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2. Does the Office of Administrative Law have jurisdiction to decide the constitutional issues raised by the petitioner?

3. Do the provisions of the Rooming and Boarding House Act of 1979, *N.J.S.A. 55:13B-1 et seq.*, as applied to petitioner, prohibit the free exercise of religion by petitioner?

4. Are the penalties imposed reasonable and proper?

For reasons hereafter stated, I conclude that:

1. The petitioner is subject to the provisions of the Rooming and Boarding House Act of 1979, *N.J.S.A. 55:13B-1 et seq.*;

2. The Office of Administrative Law does have jurisdiction to decide the application of constitutional issues to petitioner which have been raised by petitioner;

3. The application of the provisions of *N.J.S.A. 55:13B-1 et seq.* to petitioner does not constitute an interference with, nor prohibit, the free exercise of religion; and

4. The penalties imposed are both reasonable and proper under the circumstances of this case.

STIPULATION OF FACTS

The parties have stipulated the following facts and I find them to be the facts of this case:

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1. The official name of the petitioner is the Market Street Mission.

2. The Market Street Mission was incorporated on December 7, 1932, pursuant to an act of the Legislature of the State of New Jersey entitled "an Act to incorporate associations not for pecuniary profit" approved April 31, 1898. See Certificate of Incorporation attached as Petitioner's Exhibit A.

3. The purpose for which the Market Street Mission was formed looks to "the spiritual, mental, moral and physical improvement of men, women and children, by conducting a gospel rescue mission . . . to minister to the spiritual, moral, mental and physical needs of men, women and children, by the proclamation of the message of God's Saving Grace through the sacrificial and redemptive work of the Lord Jesus Christ on the Cross, and by supplying food, shelter, clothing and other necessary comforts to the poor and needy." See Certificate of Incorporation attached as petitioner's Exhibit A.

4. The Constitution and By-Laws of the Market Street Mission sets forth the purpose of the Mission as embodied in the Certificate of Incorporation and further specifies that all members of the Mission as well as its Trustees shall be persons who have "accepted the Lord Jesus Christ as his or her personal Saviour and who subscribes to Article II of this Constitution (the Creed), and who is in sympathetic accord with the purposes of this corporation as set forth in Article III of this Constitution." See Constitution and By-Laws attached as petitioner's Exhibit B.

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5. The Market Street Mission was determined by the Internal Revenue Service to be a tax-exempt organization within the provisions of §101(6) of the 1939 Code, which section was redesignated as §501(c) (3) of the 1954 Code and is presently in effect. This determination was based upon a finding that the Mission is an organization "organized and operated exclusively for religious purposes." See IRS exemption letters dated February 20, 1951 and July 22, 1974 attached as petitioner's Exhibit C and D, respectively.

6. The Market Street Mission is a member of the International Union of Gospel Missions, Inc., a not-for-profit corporation of the State of Missouri, to whom dues are paid annually.

7. The premises located at 9 Market Street, Morristown, New Jersey are currently owned and operated by Market Street Mission and were owned and operated at the time of the Bureau of Rooming and Boarding House Standards initial inspection of January 9, 1984 and subsequent inspection of March 12, 1984.

8. The premises are a three story brick structure. The structure contains sleeping and living facilities for up to approximately 50 residents.

9. The residents of the premises are provided meals at the premises.

10. On January 9, 1984, M. Frank Stegner, Bureau of Rooming and Boarding House Standards, conducted an inspection of the premises. The results of the inspection are attached as Exhibit A. The Bureau ordered the violations

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to be abated by March 9, 1984, Exhibit A.

11. The inspection report and orders of the Commissioner were served by M. Frank Stegner on Chandler C. Bergdahl, Director of Market Street Mission, on January 9, 1984, Exhibit B.

12. No administrative hearing was requested concerning the initial inspection of January 9, 1984.

13. On March 12, 1984, M. Frank Stegner reinspected the premises. The inspection report (Exhibit C) revealed that none of previously cited violations had been abated.

14. As a result of the reinspection, the Bureau of Rooming and Boarding House Standards on May 3, 1984 assessed a penalty against Market Street Mission in the amount of \$3,050 for its failure to comply with the January 9, 1984 inspection report (Exhibit E).

15. The \$3,050 penalty was assessed as follows:

a) \$250 for violation of *N.J.A.C. 5:27-5.3(c)* concerning the failure to have fire rated doors on the rooming unit (page 2 of Exhibit C)

b) \$250 for violation of *N.J.A.C. 5:27-5.3(c)* concerning the failure to have self closing doors on all dwelling units (page 2 of Exhibit C).

c) \$250 for violation of *N.J.A.C. 5:27-5.8* concerning the failure to install an automatic sprinkler system (page 2 of Exhibit C).

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d) \$250 for violation of *N.J.A.C. 5:27-5.2(a)* concerning the failure to install battery operated single station smoke detectors in the sleeping rooms (page 3 of Exhibit C).

e) \$50 for violation of *N.J.A.C. 5:27-4.8(b)* concerning the failure to have sufficient square footage of space in the sleeping rooms for each resident (page 3 of Exhibit C).

f) \$250 for violation of *N.J.A.C. 5:27-5.1* concerning the failure to have a conforming second means of egress (page 4 of Exhibit C).

g) \$250 for violation of *N.J.A.C. 5:27-5.1* concerning the failure to have fire rated windows and doors next to the path of the means of egress (page 4 of Exhibit C).

h) \$250 for violation of *N.J.A.C. 5:27-5.3(b)* concerning the failure to have the stairways enclosed with fire rated material (page 4 of Exhibit C).

i) \$250 for violation of *N.J.A.C. 5:27-5.2(b)* concerning the failure to have an AC interconnected smoke detector in the common areas of the premises (page 5 of Exhibit C).

j) \$250 for violation of *N.J.A.C. 5:27-5.9* concerning the failure to have emergency lighting at all means of egress (page 6 of Exhibit C).

k) \$250 for violation of *N.J.A.C. 5:27-5.6* for the failure to provide exit signs on all floors of the means

of egress (page 6 of Exhibit C).

l) \$250 for violation of *N.J.A.C. 5:27-5.5* for the failure to install a closed circuit, electrically supervised fire alarm system (page 5 of Exhibit C).

m) \$250 for violation of *N.J.A.C. 5:29-5.7(c)* concerning the existence of fire hazard of improper electrical wiring in 3rd floor large dorm (page 5 of Exhibit C).

16. The \$3,050 penalty notice was received by Market Street Mission on May 7, 1984.

17. On May 7, 1984, Willard Bergman, Jr., Esq., requested a hearing to contest the penalty notice and jurisdiction (Exhibit D).\*

### ANALYSIS

The Rooming and Boarding House Act, *N.J.S.A. 55:13B-1 et seq.*, was declared by the Legislature to be "remedial legislation . . . necessary to provide for the health, safety and welfare of all those who reside in rooming and boarding houses in this State . . ." *N.J.S.A. 55:13B-2*. Its enactment was the cumulative result of hearings and investigations concerning the problems surrounding the rooming and boarding home industry, which revealed numerous abuses in boarding homes throughout New Jersey. Among the most serious abuses were: diversion of boarders' Supplementary Security Income checks by operators for personal use; excessive use of cash to pay operating expenses without proper receipts; little or no accounting of personal funds of boarders that were kept and allotted by operators; use of unlicensed

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\* The date on Exhibit D is May 17, 1984.



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boarding houses as satellite facilities in order to receive more boarders; and service of substandard food to residents. All of these abuses led to the disproportionate profits for services being provided to boarding home residents. *See generally, Report and Recommendation of the State of New Jersey Commission of Investigation on Abuses and Irregularities in New Jersey's Boarding Home Industry (November, 1978) at p.5. See also, Public Hearing before Senate Institutions, Health and Welfare Committee on Recommendations to Curb Board Home Problems and Abuses (July 1978).* These examples of abuse, coupled with the existence of unkempt surroundings, overcrowding, and fatal fires at boarding homes in Camden and Long Branch, prompted the Legislature to take action to improve the standards for health, safety and welfare of boarders.

The Rooming and Boarding House Act of 1979 attempts to remedy many of these problems through a uniform system of regulating boarding homes. Specifically, the Act requires the interdepartmental cooperation of the Departments of Health, Human Services and Community Affairs in the licensing and inspection of all boarding homes. Under this legislation, the Department of Health continues to regulate all boarding homes offering health care; while the Department of Community Affairs is responsible for inspection and licensure of the remaining boarding homes. *Senate Institutions, Health and Welfare Committee Statement of N.J. Senate, No. 3111 with Senate Amendments (April 23, 1979).*

The regulations promulgated pursuant to the Act, *N.J.A.C. 5:27-1 et seq.*, establish "standards to ensure that every rooming and boarding house in the State of New Jersey is constructed, maintained and operated in such a manner as will protect the health, safety and welfare of its residents and at the same time

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preserve and promote a home-like atmosphere appropriate to such facilities." *N.J.A.C. 5:27-1.2(a)*.

*N.J.S.A. 55:13B-3a* defines "boarding house" as:

[A]ny building, together with any related structure, accessory building, any land appurtenant thereto, and any part thereof, which contains two or more units of dwelling space arranged or intended for single room occupancy, exclusive of any such unit occupied by an owner or operator, and wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement, but excluding any hotel, motel or established guest house wherein a minimum of 85% of the units of dwelling space are offered for limited tenure only, any foster home as defined in section 1 of P.L. 1962, c.137 (C.30:4C-26.1), any community residence for the developmentally disabled as defined in section 2 of P.L. 1977, c.448 (C.30:11B-2) any dormitory owned or operated on behalf of any nonprofit institution of primary, secondary or higher education for the use of its students, any building arranged for single room occupancy wherein the units of dwelling space are occupied exclusively by students enrolled in a full-time course of study at an institution of higher education approved by the Department of Higher Education, and any facility or living arrangement operated by, or under contract with, any State department or agency, upon the written authorization of the commissioner.

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*N.J.S.A. 55:13B-3h* defines a rooming house as a “boarding house wherein no personal or financial services are provided to the residents.” Under these definitions, remuneration is not essential for a structure to be considered a boarding house under the statute.

A unit of dwelling space is:

[A]ny room, rooms, suite, or portion thereof, whether furnished or unfurnished, which is occupied or intended, arranged or designed to be occupied, for sleeping or dwelling purposes by one or more persons. [*N.J.S.A. 55:13B-3j*].

Single room occupancy means:

[A]n arrangement of dwelling space which does not provide a private, secure dwelling space arranged for independent living, which contains both the sanitary and cooking facilities required in dwelling spaces pursuant to the “Hotel and Multiple Dwelling Law” . . . and which is not used for limited tenure occupancy in a hotel, motel or established guest house . . . [*N.J.S.A. 55:13B-3i*].

Limited tenure is defined as:

[R]esidence at a rooming or boarding house on a temporary basis, for a period lasting no more than 90 days, when a resident maintains a primary residence at a location other than the rooming or boarding house [or intends to do so within 90 days] . . . [*N.J.S.A. 55:13B-3d*].

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Thus, to establish the existence of a "rooming house" it must be demonstrated that there are two or more units of dwelling space, exclusive of the owner and operator; that the units are arranged for single room occupancy; and that 15% or more of the residents are present for more than a limited tenure. Regarding a boarding house, the additional requirement is that personal or financial services are provided to the residents.

In the instant case, Market Street Mission is a building containing two or more units of dwelling space, with approximately one-half of the residents living at the premises for more than a limited tenure. Further, the residents are provided personal services in the nature of meals. As such, Market Street Mission is a boarding house subject to the jurisdiction of the Rooming and Boarding House Act of 1979, *N.J.S.A. 55:13B-1 et seq.*

The Mission contends that the act and regulations do not apply to nonprofit, tax-exempt religious organizations. This argument necessarily relies on the Federal and State constitutional prohibitions against the establishment and restriction of religion. Therefore, it must be determined whether a statute and regulations applying to rooming and boarding homes in the State may be constitutionally applied to a boarding house owned and operated by a tax-exempt, nonprofit religious corporation. Neither the statute nor regulations specifically mentions or excludes religious organizations from licensing or regulation.

In determining whether a statute violates the establishment clause, New Jersey follows the Federal standard: "(1) whether the statute has a secular legislative purpose; (2) whether its primary effect neither advances nor inhibits religion; and (3) whether it fosters excessive governmental entanglement with religion." *Right to Choose v. Byrne*, 91 N.J. 287, 313 (1982).

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Before we meet the standards set forth above, we must determine whether such consideration is within the administrative adjudicative process. Generally, constitutional issues are "unsuited to resolution in administrative hearing procedures." *E.g., Califano v. Sanders*, 430 U.S. 99, 201 (1977). Facial constitutional attacks upon statutes in administrative hearings are generally precluded. *Baldwin Const. Co. v. Essex County Bd. of Taxation*, 24 N.J. Super. 252 (Law Div. 1952). Administrative agencies have power to pass on constitutional issues only where relevant and necessary to the resolution of a question concededly within their jurisdiction. The proper procedure is to raise facial constitutional attacks before the Appellate Division upon appeal from an adverse ruling of the administrative agency. *Christian Bros. Inst. of N.J. v. No. N.J. Interschol. League*, 86 N.J. 409, 416 (1981). Having been allowed to raise the issue in this forum, it is preserved for appeal.

Suffice to say, the arguments set forth in petitioner's memorandum of law as

#### POINT III

The Rooming and Boarding House Act of 1979 violates the Mission's right to equal protection of the law guaranteed under both the Federal and State Constitutions

and

#### POINT IV

Application of the Rooming and Boarding House Act to the Mission violates the religion clauses of the First Amendment

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are facial attacks upon the legislation and beyond my jurisdiction as an Administrative Law Judge.

I shall comment on petitioner's argument that the legislation is being unconstitutionally applied to it.

We must start with the observation that the legislation and regulations are indiscriminately applicable to all rooming and boarding houses, except those specifically excluded.

The exclusions were carefully defined by the Legislature. A careful reading of the excluded facilities indicates to me that such facilities are all subject to some prior approval by an appropriate governmental agency or department (e.g. Division of Youth and Family Service, Division of Developmentally Disabled, Departments of Education and Higher Education, and the Commissioner of the Department of Community Affairs). Perhaps it may be argued that facilities such as that being operated by petitioner ought to have been included in the exemptions, but then it would be subject to some prior governmental approval and we would be back to the same position in which we now find ourselves. Petitioner's argument that the inclusion of nonprofit educational facilities is an improper classification fails in this regard because all the exempted facilities require prior governmental approval.

In applying the standards earlier set forth and (1) that the statute has a secular legislative purpose, namely to promote the general health, safety and welfare by preventing the continuance of fire hazardous conditions. Secondly, it certainly is unrelated to the advancement or inhibition of religion and, thirdly, does not foster excessive governmental entanglement with religion.

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Petitioner's argument misconstrues the guarantee of the free exercise of religion. The constitutional right to the free exercise of religion is not a promise that following one's faith will be free from cost. All the Constitution assures is that government will not interfere with the exercise of religious freedom. *See, Right to Choose v. Byrne*, at 315. The statute in the instant case does not concern itself with religious freedom, but with the welfare and safety of inhabitants of rooming and boarding houses.

The United States Supreme Court in *Lemon v. Kurtzman*, 430 U.S. 602, 614 (1971) said:

Our prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. [citations omitted] Fire inspections, building and zoning regulations, and state requirements under compulsory school-attendance laws are examples of necessary and permissible contacts.

In *Allendale Congregation of Jehovah's Witnesses v. Grosman*, 30 N.J. 273 (1959) the challenge was based on zoning requirements for off-street parking. The court stated:

On the record before us we are not at all at liberty to say that the requirements have not been imposed in good faith and for the public interest or that they are unnecessary or excessive or that they are not substantially related to the promotion of the public safety and general welfare; they appear to come well within the principles expressed in cases



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which have heretofore held that property used for church purposes, along with property used for other purposes, may be lawfully subjected to reasonable zoning restrictions. [30 N.J. at 278]

The court then quoted from *Appeal of Trustees of Congregation of Jehovah's Witnesses, Bethel Unit*, 183 Pa. Super 219, 130 A.2d 240, 243 (Super. Ct. 1957), appeal dismissed for want of a substantial Federal question, 355 U.S. 40 (1957). The Pennsylvania court sustained an off-street parking ordinance, noted that the requirements bore a reasonable relation to the safety of the public, and then made the following comments which the New Jersey Supreme Court found "fully applicable":

Certainly freedom of worship does not mean that churches are exempt from reasonable police power regulations. \* \* \* The concepts of religious freedom, freedom of speech and the press which are embodied in the First Amendment have never been construed as absolute rights and beyond the power of reasonable regulation under the police power. [30 N.J. at 279]

The petitioner further argues that the penalty assessment should be declared null and void because the respondent is without jurisdiction over the petitioner. However, if I decide petitioner is subject to the respondent's jurisdiction, petitioner requests that the penalty be reduced because of the nature of its community service, its existing safety program which it has implemented and the good faith of its argument on religious concepts.

The respondent argues that the penalty is reasonable, that it was calculated at the minimum rate and was imposed for the



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continual failure to abate the safety violations as ordered.

The violations continue unabated. Administrative penalties should not be upset unless the penalties shock the conscience. *Cf., In re Polk License Revocation*, 90 N.J. 550, 578 (1982).

I am satisfied that the penalty is the minimum. The penalty reflects respect for the Mission, its program, its safety implementation program and its good faith position in this litigation.

Nevertheless, the petitioner is not, and should not be, immune from penalty. Perhaps application for exemption from strict application as to one or more violations may bring about a reduction in the penalty at the discretion of the Commissioner. I have in mind the testimony I heard that the fire escape on the premises is improper for rooming or boarding houses. It is a ladder-type escape which is approved for hotels and multiple dwellings. A rooming or boarding house must have a step-type fire escape which reaches to the ground.

The history of the act clearly reflects the reason for the latter requirement. Handicapped and aged persons cannot be expected to easily master a ladder-type fire escape. Indeed, it may well be an additional hazard, or unusable at time of need, to such persons. Thus the rule and requirements.

Residents in petitioner's program may be aged and handicapped or may be unable to use such a ladder-type fire escape.

But not all of the residents will be so affected. Care can be taken not to expose such residents to such hazard by appropriate

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placement within the building so that use of the fire escape is not required by such residents.

It would appear that this type of violation may be subject to the Commissioner's discretion.

CONCLUSION

Based on all of the foregoing I CONCLUDE:

1. I am without jurisdiction to determine a facial attack on the constitutionality of the statute and regulations here involved.

2. Petitioner's argument that said statute and regulations are being unconstitutionally applied to it is without merit.

3. Religious institutions are subject to the police powers of the state where related to the safety and welfare of the public.

4. The application of the provisions of *N.J.S.A. 55:13B-1 et seq.* to petitioner does not constitute an interference with nor prohibit the free exercise of religion.

5. The penalty imposed is, under the circumstances of this case, reasonable.

ORDER

It is hereby ORDERED that the fire safety violations existing at petitioner's premises be abated within 60 days after the final decision in this matter.

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It is further ORDERED that the penalty imposed by the order dated May 3, 1984, be satisfied within 60 days after the final decision in this matter.

This recommended decision may be affirmed, \*modified or rejected by the Commissioner of the Department of Community Affairs, JOHN P. RENNA, who by law is empowered to make a final decision in this matter. However, if John Renna does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with JOHN P. RENNA for consideration.

Date: July 12, 1985

s/ George Perselay  
GEORGE PERSELAY, ALJ

Receipt Acknowledged

s/ (illegible)  
DEPARTMENT OF  
COMMUNITY AFFAIRS

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**APPENDIX D — FINAL DECISION OF THE  
COMMISSIONER OF THE DEPARTMENT OF COMMUNITY  
AFFAIRS DATED AUGUST 12, 1985**

DEPARTMENT OF COMMUNITY AFFAIRS  
FINAL DECISION  
OAL DKT. NO. CAF-8072-84  
AGENCY DKT. NO. 84-756-RB/1424 C0024

MARKET STREET MISSION,

*Petitioner,*

vs.

BUREAU OF ROOMING AND BOARDING HOUSE  
STANDARDS,

*Respondent.*

Having reviewed the Initial Decision of the Administrative Law Judge in the above case, together with any exceptions or replies submitted, I hereby adopt the Initial Decision as the Commissioner's Final Decision; provided, however, that, taking account of the fact that the petitioner is a nonprofit philanthropic organization, I hereby direct that the penalty be waived if, within 30 days of receipt of this decision, the petitioner files an application for licensure, enters into an agreement with the Bureau to establish a schedule for the abatement of all violations and proceeds diligently to abate all violations directly related to life safety.

DATE: August 12, 1985

s/ John P. Renna  
JOHN P. RENNA,  
COMMISSIONER

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**APPENDIX E — NOTICE OF APPEAL DATED AUGUST  
1, 1988**

**SUPREME COURT OF NEW JERSEY  
A-23 SEPTEMBER TERM 1987**

**CIVIL ACTION  
Docket No. 27,277**

**MARKET STREET MISSION,**

**Appellant,**

**v.**

**BUREAU OF ROOMING AND BOARDING HOUSE  
STANDARDS, DEPARTMENT OF COMMUNITY AFFAIRS,  
STATE OF NEW JERSEY,**

**Respondent.**

**NOTICE OF APPEAL TO THE SUPREME COURT  
OF THE UNITED STATES**

Notice is hereby given that Market Street Mission, the above named appellant, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of New Jersey entered in this action on May 19, 1988.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

Dated: July 28, 1988

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RAND, ALGEIER, TOSTI,  
WOODRUFF & FRIEZE, P.C.  
60 Washington Street  
Morristown, NJ 07960  
Attorneys for Appellant  
Market Street Mission

FILED: August 1, 1988

s/ Gary C. Algeier  
GARY C. ALGEIE  
A Member of the Firm

AFFIDAVIT OF SERVICE

JOHN F. McDONNELL of full age, being duly sworn  
according to law, deposes and says:

1. I am an attorney-at-law of the State of New Jersey  
associated with the law firm of Rand, Algeier, Tosti, Woodruff  
& Frieze, P.C., attorneys for Appellant Market Street Mission.

2. All parties required to be served pursuant to Rule 28 of  
the Rules of the Supreme Court of the United States have been  
served. The following individuals were served a copy of the Notice  
of Appeal at the following addresses by depositing the document  
in a United States Post Office mailbox on July 28, 1988, with  
first-class postage prepaid:

Stephen W. Townsend, Clerk  
Supreme Court of NJ  
Hughes Justice Complex, CN-970  
Trenton, NJ 08625

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Thomas F. Lowe,  
Clerk Office of Administrative Law  
9 Quakerbridge Plaza, CN-049  
Trenton, NJ 08625

Michael R. Clancy,  
Deputy Attorney General  
Department of Law & Public Safety  
Division of Law  
Hughes Justice Complex, CN-112  
Trenton, NJ 08625

s/ John F. McDonnell  
JOHN F. McDONNELL

Subscribed and sworn to before  
me this 28th day of July, 1988.

(Signature)  
A Notary Public Of New Jersey

## APPENDIX F — ROOMING AND BOARDING HOUSE ACT OF 1979

### Section

- 55:13B-1. Short title.
- 55:13B-2. Legislative findings and declarations.
- 55:13B-3. Definitions.
- 55:13B-4. Powers of commissioner.
- 55:13B-5. Regulations; distinctions among types; waiver, modification or postponement of application.
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- 55:13B-7. License; necessity; categories; application; fee; duration; renewal; endorsement for separate building.
- 55:13B-8. Operator; residing in facility; acceptance of service; primary owner deemed operator if operator unavailable.
- 55:13B-9. Inspections; review of records; determination of violation of standards; notice.
- 55:13B-10. Prohibited conduct; violations; penalties.
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- 55:13B-11.1. Additional penalties.
- 55:13B-11.2. Failure to correct or abate specified conditions; separate offenses.
- 55:13B-12. Service of notices or orders.



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- 55:13B-13. Continuance of powers and duties of commissioner under Hotel and Multiple Dwelling Law.
- 55:13B-14. Prohibition of notice to leave or other action in retaliation; enforcement of rights or complaint by resident.
- 55:13B-15. Local governments or officers; authorization to inspect; reports; preemption of regulations; supplying information.
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- 55:13B-17. Legislative findings and declarations.
- 55:13B-18. Boarding facility defined.
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- 55:13B-20. Notice of rights; giving to residents; posting; contents.
- 55:13B-21. Violation of rights; action for damages; costs and attorney's fees.

**55:13B-1. Short title**

This act shall be known and may be cited as the "Rooming and Boarding House Act of 1979."

L.1979, c. 496, § 1.

**55:13B-2. Legislative findings and declarations**

The Legislature hereby finds and declares that:

Whereas, Numerous citizens of this State reside in rooming and boarding houses which are either infrequently supervised or completely unsupervised, unlicensed and unregulated by the

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State and by other governmental bodies; and

Whereas, The residents of such facilities are predominantly elderly, disabled and poor, many of whom need social, personal and financial services, protection from building hazards and protection from unscrupulous and predatory neighbors; and

Whereas, There is a need to ascertain the costs and resources of facilities currently licensed by the State and known as boarding homes for sheltered care, so as to determine whether and under what conditions that number of such homes should be increased and their standards of care raised; and

Whereas, It is incumbent upon the government of this State to determine whether the residents of rooming houses, boarding houses, and currently licensed boarding facilities are in need of special services, care or treatment and might profit from referral to existing or available community agencies or alternative living arrangements; and

Whereas, Several State agencies have different yet appropriate responsibilities for protecting the health, safety and welfare of the residents of rooming houses, boarding houses and residential health care facilities and it is necessary that there be coordination among these agencies for the cost-effective fulfillment of their respective responsibilities.

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This remedial legislation is therefore necessary to provide for the health, safety and welfare of all those who reside in rooming and boarding houses in this State, promote the growth and continued improvement of boarding homes for sheltered care, to be known henceforth as residential health care facilities, to ensure that all agencies of this State work in unison for the protection and care of the residents of rooming houses, boarding houses and residential health care facilities, and to ensure that needed social and remedial services are made available to the residents of such facilities through the efforts of county welfare boards.

L.1979, c. 496, § 2.

**55:13B-3. Definitions**

As used in this act:

a. "Boarding house" means any building, together with any related structure, accessory building, any land appurtenant thereto, and any part thereof, which contains two or more units of dwelling space arranged or intended for single room occupancy, exclusive of any such unit occupied by an owner or operator, and wherein personal or financial services are provided to the residents, including any residential hotel or congregate living arrangement, but excluding any hotel, motel or established guest house wherein a minimum of 85% of the units of dwelling space are offered for limited tenure only, any foster home as defined in section 1 of P.L.1962, c. 137 (C. 30:4C-26.1), any community residence for the developmentally disabled and any community residence for the mentally ill as defined in section 2 of P.L.1977, c. 448 (C. 30:11B-2), any dormitory owned or operated on behalf of any nonprofit institution of primary, secondary or higher education

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for the use of its students, any building arranged for single room occupancy wherein the units of dwelling space are occupied exclusively by students enrolled in a full-time course of study at an institution of higher education approved by the Department of Higher Education, any facility or living arrangement operated by, or under contract with, any State department or agency, upon the written authorization of the commissioner, and any owner-occupied, one-family residential dwelling made available for occupancy by not more than six guests, where the primary purpose of the occupancy is to provide charitable assistance to the guests and where the owner derives no income from the occupancy. A dwelling shall be deemed "owner-occupied" within the meaning of this section if it is owned or operated by a nonprofit religious or charitable association or corporation and is used as the principal residence of a minister or employee of that corporation or association. For any such dwelling, however, fire detectors shall be required as determined by the Department of Community Affairs.

b. "Commissioner" means the Commissioner of the Department of Community Affairs.

c. "Financial services" means any assistance permitted or required by the commissioner to be furnished by an owner or operator to a resident in the management of personal financial matters, including, but not limited to, the cashing of checks, holding of personal funds for safekeeping in any manner or assistance in the purchase of goods or services with a resident's personal funds.

d. "Limited tenure" means residence at a rooming or boarding house on a temporary basis, for a period lasting no more than 90 days, when a resident either maintains a primary residence

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at a location other than the rooming or boarding house or intends to establish a primary residence at such a location and does so within 90 days after taking up original residence at the rooming or boarding house.

e. "Operator" means any individual who is responsible for the daily operation of a rooming or boarding house.

f. "Owner" means any person who owns, purports to own, or exercises control of any rooming or boarding house.

g. "Personal services" means any services permitted or required to be furnished by an owner or operator to a resident, other than shelter, including, but not limited to, meals or other food services, and assistance in dressing, bathing or attending to other personal needs.

h. "Rooming house" means a boarding house wherein no personal financial services are provided to the residents.

i. "Single room occupancy" means an arrangement of dwelling space which does not provide a private, secure dwelling space arranged for independent living, which contains both the sanitary and cooking facilities required in dwelling spaces pursuant to the "Hotel and Multiple Dwelling Law", P.L.1967, c. 76 (C. 55:13A-1 et seq.), and which is not used for limited tenure occupancy in a hotel, motel or established guest house, regardless of the number of individuals occupying any room or rooms.

j. "Unit of dwelling space" means any room, rooms, suite, or portion thereof, whether furnished or unfurnished, which is occupied or intended, arranged or designed to be occupied, for

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sleeping or dwelling purposes by one or more persons.

L.1979, C. 496, § 3. Amended by L.1985, c. 364, § 1, eff. Nov. 12, 1985; L.1987, c. 112, § 8, eff. April 24, 1987.

**55:13B-4. Powers of commissioner**

The commissioner, to effectuate the provisions and purposes of this act, shall have the power to:

a. Promulgate and amend rules and regulations in accordance with the Administrative Procedure Act, P.L.1968, c. 410 (C. 52:14B-1 et seq.);

b. Establish standards governing safety, security, recordkeeping, living conditions and services in rooming and boarding houses;

c. Issue, suspend and revoke licenses for rooming and boarding houses;

d. Enter and inspect any such facility without prior notice and review such records as may be required pursuant to this act;

e. Establish standards for the building, conversion and renovation of all such facilities;

f. Enforce the provisions of this act by entering complaints against any person in violation thereof through administrative proceedings and civil actions in State and local courts for injunctive relief and for the assessment of penalties, compromise and settle any penalties in such amounts as he may determine to be equitable under the circumstances of the violation, and take such other action

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as he may deem necessary in accordance with the provisions of this act;

g. Issue subpoenas to compel attendance at any hearing in any part of the State, and the presentation of such reports, documents, books and papers as he may deem necessary;

h. Institute an in rem action against property, or a quasi in rem action against the owner by attachment of a property followed by service by publication, in connection with violations of the provisions of this act, in cases where the owner, after diligent effort, cannot be served; and

i. Hold and exercise all the rights and remedies available to a judgment creditor where a judgment is entered against an owner or operator as a result of a penalty action or administrative action taken pursuant to enforcement of this act.

L.1979, c. 496, § 4.

**55:13B-5. Regulations; distinctions among types; waiver, modification or postponement of application**

a. In promulgating any regulations pursuant to the provisions of this act, the commissioner may make distinctions among types of rooming and boarding houses according to the age, size, type of construction or nature of ownership of the facility and the type of services offered or limitations on occupancy therein.

b. Upon application of an owner, the commissioner may waive, modify or postpone the application of a regulation to the owner's facility, provided, however, that no such waiver, modification or postponement shall be granted unless the



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commissioner shall find that (1) Strict compliance with a regulation would result in undue hardship for residents of the facility, and (2) If granted, it would not unreasonably jeopardize the welfare of residents or of the public at large.

L.1979, c. 496, § 5.

**55:13B-6. Standards**

The commissioner shall establish standards to ensure that every rooming and boarding house in this State is constructed and operated in such a manner as will protect the health, safety and welfare of its residents and at the same time preserve and promote a homelike atmosphere appropriate to such facilities, including, but not limited to, standards to provide for the following:

- a. Safety from fire;
- b. Safety from structural, mechanical, plumbing and electrical deficiencies;
- c. Adequate light and ventilation;
- d. Physical security;
- e. Protection from harassment, fraud and eviction without due cause;
- f. Clean and reasonably comfortable surroundings;
- g. Adequate personal and financial services rendered in boarding houses;

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- h. Disclosure of owner identification information;
- i. Maintenance of orderly and sufficient financial and occupancy records;
- j. Referral of residents, by the operator, to social service and health agencies for needed services;
- k. Assurance that no constitutional, civil or legal right will be denied solely by reason of residence in a rooming or boarding house;
- l. Reasonable access for employees of public and private agencies, and reasonable access for other citizens upon receiving the consent of the resident to be visited by them; and
- m. Opportunity for each resident to live with as much independence, autonomy and interaction with the surrounding community as he is capable of.

L.1979, c. 496, § 6.

**55:13B-7. License; necessity; categories; application; fee; duration; renewal; endorsement for separate building**

a. No person shall own or operate a rooming or boarding house, hold out a building as available for rooming or boarding house occupancy, or apply for any necessary construction or planning approvals related to the establishment of a rooming or boarding house without a valid license to own or operate such a facility, issued by the commissioner.

Any person found to be in violation of this subsection shall

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be liable for a civil penalty of not more than \$5,000.00 for each building so owned or operated.

b. The commissioner shall establish separate categories of licensure for owning and for operating a rooming or boarding house, provided, however, that an owner who himself operates such a facility need not also possess an operator's license.

If an owner seeking to be licensed is other than an individual, the application shall state the name of an individual who is a member, officer or stockholder in the corporation or association seeking to be licensed, and the same shall be designated the primary owner of the rooming or boarding house.

Each application for licensure shall contain such information as the commissioner may prescribe and shall be accompanied by a fee established by the commissioner which shall not be less than \$75.00 nor more than \$150.00. If, upon receipt of the fee and a review of the application, the commissioner determines that the applicant will operate, or provide for the operation of, a rooming or boarding house in accordance with the provisions of this act, he shall issue a license to him.

Each license shall be valid for 1 year from the date of issuance, but may be renewed upon application by the owner or operator and upon payment of the same fee required for initial licensure.

c. Only one license shall be required to own a rooming or boarding house, but an endorsement thereto shall be required for each separate building owned and operated or intended to be operated as a rooming or boarding house. Each application for licensure or renewal shall indicate every such building for which an endorsement is required. If, during the term of a license, an

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additional endorsement is required or an existing one is no longer required, an amended application for licensure shall be submitted.

L.1979, c. 496, § 7.

**55:13B-8. Operator, residing in facility; acceptance of service; primary owner deemed operator if operator unavailable**

Each operator of a rooming or boarding house shall reside in the facility and shall be responsible for accepting service of any notices or orders issued by the commissioner pursuant to the provisions of this act. If an operator resigns, is dismissed or is otherwise unavailable to carry out his responsibilities, then the primary owner shall be deemed to be the operator of the facility until such time as the commissioner is notified of the appointment of a new operator, and shall have the same responsibilities and be subject to the same penalties otherwise prescribed for an operator under the provisions of this act.

L.1979, c. 496, § 8.

**55:13B-9. Inspections; review of records; determination of violation of standards; notice**

The commissioner shall ensure that each rooming or boarding house whose owner possesses a valid license is inspected and its records reviewed at least once each year for the purpose of determining whether the owner or operator is complying with standards promulgated pursuant to the provisions of this act. If the commissioner determines, as a result of any such inspection and review of records, that an owner or operator is in violation of such standards, he shall serve the owner or operator of the facility with a written notice thereof, which shall fix a date by

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which the owner or operator shall enter into compliance.

L.1979, c. 496, § 9.

**55:13B-10. Prohibited conduct; violations; penalties**

a. No person shall: (1) obstruct, hinder, delay or otherwise interfere with any action of the commissioner in the exercise of any power or duty under the provisions of this act; (2) prepare, utter or otherwise render any false statement, application, report or document which is permitted or required pursuant to this act; or (3) refuse to comply with any ruling, order, notice or action made by the commissioner pursuant to the provisions of this act.

b. Any person who violates any provision of subsection a. above shall be liable for a civil penalty of not less than \$50.00 nor more than \$5,000.00 for each violation. Each day during which any person violates any such provision after the date fixed for termination of the violation in any order for termination issued by the commissioner shall constitute an additional, separate and distinct violation, except during the time an appeal from such an order is taken or pending. If an administrative penalty order has not been satisfied within 30 days of its issuance, the penalty may be sued for and recovered by the commissioner in a summary proceeding in the Superior Court under "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.).

c. The commissioner may suspend, cancel, revoke, or refuse to issue any endorsement to the license of any owner or operator who violates any provision of subsection a. above.

Where the owner or operator found to be in violation of subsection a. of this section is a corporation, then the commissioner

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may suspend, cancel, revoke, or refuse to issue any endorsement to the license of: (1) the officers, directors and shareholders of the corporation, and (2) any corporation owning or operating a rooming or boarding house that has among its officers, directors or shareholders any person whose license has been suspended, cancelled or revoked pursuant to paragraph (1) of this subsection.

d. Where either the owner or operator of a boarding or rooming house found to be in violation of subsection a. above is a corporation, then, in addition to the corporation being subject to the penalties set forth in subsection b., the officers and directors of the corporation are subject, individually and personally, to those penalties.

L.1979, c. 496, § 10. Amended by L.1985, c. 413, § 1.

**55:13B-11. Violations constituting imminent hazard to health, safety or welfare; order of vacation or correction of violation; reinspection after notice of correction; reconsideration hearing; injunction; failure to correct; order for submission of reports or receivership**

a. If, upon inspection of any rooming or boarding house, the commissioner shall discover any violation of the provisions of this act, or any rules or regulations promulgated thereunder, which constitutes an imminent hazard to the health, safety or welfare of the occupants or intended occupants thereof, or of the public generally, the commissioner may issue and cause to be served on the owner or operator thereof a written order directing; (1) that the rooming or boarding house be vacated forthwith or (2) that the violation be corrected within the period specified in the order. The written order shall state the nature of any violation, the date and hour by which the rooming or

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boarding house be vacated or the violation be abated and, if necessary, the manner in which the violation shall be abated. A copy of the written order to vacate shall be sent to relevant county and municipal officials within 24 hours of its issuance.

Upon the receipt by the commissioner of written notice from the owner or operator of any rooming or boarding house vacated or ordered to be vacated stating that the violation has been terminated, the commissioner shall reinspect the rooming or boarding house within one working day of the receipt of the notice. If, upon reinspection, the commissioner determines that the violation has been terminated, he shall rescind the order requiring the vacation of the rooming or boarding house and occupancy may be resumed forthwith. If reinspection is not conducted by the commissioner within one working day of the receipt of the notice, occupancy of the rooming or boarding house may be resumed forthwith.

Where the owner or operator of any rooming or boarding house denies that any violation justifying an order to vacate exists, he may apply to the commissioner for a reconsideration hearing, which shall be afforded and a decision rendered by the commissioner within 48 hours of the receipt of the application for the hearing. If the commissioner decides adversely to the owner or operator, the owner or operator may petition the Superior court of this State for injunctive relief against any order of the commissioner directing that the rooming or boarding house be vacated forthwith.

Relief may be sought by an order to show cause and may be granted ex parte pending a hearing de novo, except that the only issue to be determined in the hearing de novo shall be the existence of any violation of the provisions of this act, or rules



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and regulations promulgated thereunder, which constitutes an imminent hazard to the health, safety or welfare of the occupants or intended occupants of the rooming or boarding house, or to the public generally.

Where the owner or operator of any rooming or boarding house denies that any violation justifying an order to abate within a specific period exists, the owner or operator may seek injunctive relief by an order to show cause, and relief may be granted ex parte pending a hearing de novo. However, the only issue to be determined in the hearing de novo shall be the existence of any violation of the provisions of this act, or rules and regulations promulgated thereunder, which constitutes a hazard to the health, safety or welfare of the occupants or intended occupants of the rooming or boarding house, or to the public generally.

b. If an owner or operator is found to be in violation of any of the provisions of this act, and notice thereof has been served which also fixes a date by which any such violations shall be terminated, and such owner or operator fails to terminate such violation by such date, then the commissioner may take any of the following actions:

(1) Issue an order directing that the owner submit monthly reports to the commissioner, in a form prescribed by the commissioner, listing all payments received and expenditures made by him, in connection with the operation of any rooming and boarding house owned by him, received and or made by the operator or any agent or employee of any such facility. In addition, the commissioner may require said owner to report such payments and expenditures for any past period which the commissioner shall determine, and to provide statements of personal or corporate assets and worth.

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During the term of any such order, the owner shall not increase the amount of any payment due from, or require any new payment or charge from, any resident of any rooming or boarding house owned by him, without prior written approval from the commissioner.

During the term of any such order, the commissioner may direct that the owner make certain expenditures to terminate violations of any provisions of this act, or may prohibit any expenditure deemed by the commissioner to be not in the best interests of the residents of any rooming or boarding house belonging to the owner.

The commissioner shall rescind any such order whenever the violations which caused the order to be issued, and any other violations, have been terminated by the owner.

(2) Petition the Superior Court for an order appointing a receiver for the rooming or boarding house of such an owner. It shall be a sufficient defense to the proceeding if the owner establishes that the condition alleged in the petition of the commissioner does not in fact exist or that such condition has been remedied or that such condition, although periodically remedied, has not habitually existed as pattern and practice.

The court shall proceed in a summary manner and shall render a judgment either:

(1) Dismissing the petition; (2) Granting the relief provided under subsection a. above or directing the commissioner to issue an order as provided under subsection b. above; or (3) Appointing a receiver from a list of nominees submitted by the commissioner or any other responsible person; provided, however, that the owner

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or operator of the home shall not be so appointed.

With the approval of the court, the receiver shall have the following powers: (1) To hire any consultants or to undertake any studies of the rooming or boarding house which he deems appropriate; (2) To make any repairs, improvements or expenditures he deems necessary to terminate conditions or violations specified in the complaint; (3) To hire or discharge any employees, including the operator; (4) To receive or expend in a reasonable and prudent manner the revenues of the facility due on the date of, or subsequent to, the entry of the court's judgment; (5) To continue to operate the facility in accordance with all standards promulgated by the commissioner; (6) To perform all acts necessary or appropriate to conserve the facility and to promote the health, safety and welfare of its residents; and (7) To exercise such other powers as he deems necessary or appropriate to implement the court's judgment.

The receiver may, in his discretion, either: (1) Assume the role of operator; or (2) Direct the operator to take such actions as will eliminate or rectify the conditions specified in the petition.

The court shall require the filing at periodic intervals of reports of actions taken by the receiver and of accounts itemizing revenues and expenditures. Such reports shall be open to inspection by all parties in the case. Upon motion of the court, the receiver, or the owner, the court may require a presentation or settlement of the accounts. Notice of a motion for presentation or settlement of accounts shall be served on the owner and any party holding an interest in such revenues and expenditures.

The commissioner, receiver or owner may make a motion to terminate the receivership on the grounds that the conditions

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complained of have been terminated. The court may thereupon immediately terminate the receivership or terminate it subject to such terms as it feels are necessary or appropriate to prevent the conditions complained of from recurring.

The court shall allow from the revenues of the rooming or boarding houses a reasonable amount of compensation for the expenditures and services of the receiver. The receiver may be required to furnish a bond, the amount and form of which shall be approved by the court, and the cost of which shall be borne by the owner.

During the time such receivership is in effect, the receiver shall give priority to the termination of violations when determining the expenditure of any income, and the court shall ensure that any creditor aggrieved is satisfied only to the extent consistent with the health, safety and welfare of the residents of the rooming or boarding house. The receivership order shall remain in effect for as long after the termination of any violations as is necessary for the receiver to satisfy any creditors to whom payments were deferred in order to make funds available to effect such termination.

During the period when the receivership order is ineffect, any action for possession initiated by any mortgage holder shall be brought before the court having jurisdiction in the receivership case and shall only be granted if it shall appear that the mortgage holder, when in possession, will terminate or remove the violations which caused the receivership order to be issued, and will operate the facility in accordance with standards promulgated by the commissioner.

No provision of this act shall limit the right of any owner

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to sell or mortgage any facility subject to receivership under the provisions of this section, provided, however, that the approval of the court having jurisdiction shall first be required and shall be granted only if it shall appear that the purchaser will terminate the violations which caused the receivership order to be issued and will operate the facility in accordance with standards promulgated by the commissioner, or if it appears that the granting of a mortgage will materially contribute to the ability of the owner to terminate such violations.

During the period when the receivership order is in effect, the owner shall have the right to use assets not under the receiver's control to terminate such violations.

L.1979, c. 496, § 11.

**55:13B-11.1. Additional penalties**

The penalties contained in this section are in addition to any other penalties which may be imposed for a violation of P.L.1979, c. 496 (C. 55:13B-1 et seq.).

a. A person who knowingly owns or operates a boarding or rooming house without a valid license issued pursuant to section 7 of P.L.1979, c. 496 (C. 55:13B-7) commits a disorderly persons offense.

b. An owner or operator of a boarding or rooming house who knowingly fails to correct or abate any violation within the time period specified in a notice or report of violation or any order of the Commissioner of Community Affairs rendered as a result of an inspection conducted by the Department of Community Affairs or any duly authorized municipal or county

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inspector commits a disorderly persons offense.

c. An owner or operator of a boarding or rooming house who knowingly fails to comply with an order of the commissioner issued after a finding of imminent hazard pursuant to section 11 of P.L.1979, c. 496 (C. 55:13B-11) commits a crime of the fourth degree.

d. Where a corporation is the owner or operator of a boarding or rooming house, the corporate officers, as well as the corporation, are liable for violations of subsections a., b. and c. of this section.

e. It is no defense to a violation of this section that the owner or operator of the rooming or boarding house has not collected rent, or has been unable to collect rent, from the residents of the premises.

L.1985, c. 413, § 2.

**55:13B-11.2 Failure to correct or abate specified conditions;  
separate offenses**

Where a notice, order or report, served or issued pursuant to the provisions of P.L.1979, c. 496 (C. 55:13B-1 et seq.) specifies several conditions in need of correction or abatement, failure to correct or abate each condition constitutes a separate offense under that act.

L.1985, c. 413, § 3.

*Appendix F***55:13B-12. Service of notices or orders**

Notices or orders issued pursuant to this act shall be served upon the owner or operator by posting them by certified mail, return receipt requested, to the owner or operator of a rooming or boarding house or, if necessary, by leaving them with the owner or a person above the age of 14 at the owner's dwelling unit or place of business. the date of service shall be considered to be the third day after mailing or after the date the notice or order is left at the owner's dwelling unit or place of business.

L.1979, c. 496, § 12.

**55:13B-13. Continuance of powers and duties of commissioner under Hotel and Multiple Dwelling Law**

Nothing in this action shall be construed to abrogate or impair the powers and duties of the commissioner under the "Hotel and Multiple Dwelling Law," P.L.1967, c. 76 (C. 55:13A-1 et seq.) with respect to any hotel, motel or established guest house, or any dormitory owned or operated by any nonprofit institution of primary, secondary or higher education to provide housing for its students, or any multiple dwelling except those defined herein as rooming or boarding houses.

L. 1979, c. 496, § 13.

**55:13B-14. Prohibition of notice to leave or other action in retaliation; enforcement of rights or complaint by resident**

No owner, operator or employee shall serve notice upon a resident to leave the premises, or take any other action in retaliation for: (a) The efforts of the resident or a person acting on his behalf to secure or enforce any rights under a contract, the laws of this State or any of its subdivisions, or the laws of the United States;



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or (b) The good faith complaint of a resident or a person acting on his behalf to a governmental authority concerning the owner, operator or employee's alleged violation of this act or any health or safety law, regulation, code or ordinance, or other law or regulation which has as its objective the regulation of rooming houses or boarding houses.

L.1979, c. 496, § 14.

**55:13B-15. Local governments or officers; authorization to inspect; reports; preemption of regulations; supplying information**

a. Any county or municipality in this State may be authorized by the commissioner to perform such inspection within its corporate limits as may be necessary to carry out the provisions of this act, subject to the control and supervision of the commissioner and in accordance with any rules and regulations promulgated by him governing the conduct of such inspections. Every county or municipality so authorized shall furnish the commissioner with such reports and information as he may require.

b. No owner or operator subject to the provisions of this act shall also be subject to regulation by any county or municipality of this State for the same purpose or end, except for construction regulations issued by a municipality pursuant to the "State Uniform Construction Code Act," P.L.1975, c. 217 (C. 52:27D-119 et seq.).

c. Any municipal tax assessor, tax collector, or official charged with responsibility for enforcing a housing or property maintenance ordinance or code, county recorder of deeds or local enforcing agency established pursuant to the "State Uniform Construction Code Act," shall, upon request of the commissioner

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provide him with such information as will assist him in determining the location of any building or structure subject to the provisions of this act.

L.1979, c. 496, § 15.

**55:13B-16. Severability**

If any section, subsection, paragraph, sentence or other part of this act is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this act directly involved in the controversy in which said judgment shall have been rendered.

L.1979, c. 496, § 16.

**55:13B-17. Legislative findings and declarations**

The Legislature hereby finds and declares that the well-being of residents of rooming houses, boarding houses and residential health care facilities in the State of New Jersey requires a declaration of a bill of rights for such residents.

L.1979, c. 500, § 1.

**55:13B-18. Boarding facility defined**

For the purposes of this act, "boarding facility" means rooming house, boarding house or residential health care facility.

L.1979, c. 500, § 2.

*Appendix F***55:13B-19. Rights of resident of boarding facility**

Every resident of a boarding facility shall have the right:

- a. To manage his own affairs;
- b. To wear his own clothing;
- c. To determine his own dress, hair style, or other personal effects according to individual preference;
- d. To retain and use his personal property in his immediate living quarters, so as to maintain individuality and person dignity, except where the boarding facility can demonstrate that such would be unsafe, impractical to do so, infringes upon the rights of others and that mere convenience is not the facility's motive to restrict this right;
- e. To receive and send unopened correspondence;
- f. To unaccompanied access to a telephone at a reasonable hour and to a private phone at the resident's expense;
- g. To privacy;
- h. To retain the services of his own personal physician at his own expense or under a health care plan and to confidentiality and privacy concerning his medical condition and treatment;
- i. To unrestricted communication, including personal visitation with any person of his choice, at any reasonable hour;
- j. To make contacts with the community and to achieve the

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highest level of independence, autonomy, and interaction with the community of which he is capable;

k. To present grievances on behalf of himself or others to the operator, State governmental agencies or other persons without threat of reprisal in any form or manner whatsoever;

l. To a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident;

m. To refuse to perform services for the boarding facility, except a contracted for by the resident and the operator;

n. To practice the religion of his or her choice, or to abstain from religious practice; and

o. To not be deprived of any constitutional, civil or legal right solely by reason of residence in a boarding facility.

L.1979, c. 500, § 3.

**55:13B-20. Notice of rights; giving to residents; posting; contents**

The operator of a boarding facility shall ensure that a written notice of the rights set forth in this act be given to every resident upon admittance to the boarding facility and to each individual already in residence. The operator shall also post this notice in a conspicuous public place in the boarding facility. This notice shall include the name, address and telephone numbers of the Office of the Ombudsman for the Institutionalized Elderly, county

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welfare agency and county office on aging.

L.1979, c. 500, § 4.

**55:13B-21. Violation of rights; action for damages; costs and attorney's fees**

Any person or resident whose rights as defined herein are violated shall have a cause of action against any person committing such violation. The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual and punitive damages for their violation. Any plaintiff who prevails in any such action shall be entitled to recover reasonable attorney's fees and costs of the action.

L.1979, c. 500, § 5.

**APPENDIX G — RELEVANT REGULATIONS**

**CHAPTER 27**

**REGULATIONS GOVERNING ROOMING  
AND BOARDING HOUSES**

**Authority**

N.J.S.A. 55:13B-4.

**Source and Effective Date**

R.1980 d.376, eff. August 28, 1980.

See: 12 N.J.R. 452(a), 12 N.J.R. 569(b).

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## SUBCHAPTER 1. ADMINISTRATION AND ENFORCEMENT

### 5:27-1.1 Title

This chapter, promulgated pursuant to N.J.S.A. 55:13B-1

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et seq., shall be known and may be cited as the "Regulations Governing Rooming and Boarding Houses."

**5:27-1.2 Purpose**

(a) This chapter is promulgated for the purpose of establishing standards to ensure that every rooming and boarding house in the State of New Jersey is constructed, maintained and operated in such a manner as will protect the health, safety and welfare of its residents and at the same time preserve and promote a home-like atmosphere appropriate to such facilities.

(b) The Bureau shall have discretion not to enforce any standard hereby established if it determines that strict compliance with such standard is not necessary in a particular case in order to accomplish the purpose set forth in (a) above.

(c) In the event that the Bureau determines that any rooming or boarding house, or any part thereof, because of its partial use for other than single room occupancy should more appropriately be evaluated under applicable standards contained in the regulations for the Maintenance of Hotels and Multiple Dwellings (N.J.A.C. 5:10), the Bureau shall have discretion to enforce the standards contained in N.J.A.C. 5:10 in lieu of the standards contained in N.J.A.C. 5:27-4, 5, and 6.

**5:27-1.3 Administration and enforcement**

(a) The Bureau shall administer and enforce this chapter.

(b) The Bureau may authorize any municipality or county, through its appropriate housing, health, fire prevention or social service agencies to perform inspections for the Bureau. Any

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authorization to perform inspections given to any municipality or county shall contain such terms and conditions as the Bureau may deem necessary and proper.

**5:27-1.4 Continuation of lawful existing use**

The lawful occupancy and use of any rooming or boarding house existing on the effective date of the act may be contained unless a change is required by the provisions of this chapter and unless it is owned or operated by a person who has not obtained a license from the Bureau on or before December 31, 1980.

\* \* \*

**5:27-1.6 Licenses**

(a) No person shall own or operate a rooming or boarding house without a license from the Bureau allowing him to own or operate a rooming or boarding house providing the services therein provided and housing the number of residents therein housed.

(b) There shall be four classes of licenses, which shall be as follows:

1. Class A license: Valid for rooming houses only;
2. Class B license: Valid only for rooming houses and for boarding houses offering no financial services and no personal services other than meals and other food services and laundry;
3. Class C license: Valid for all rooming and boarding houses.

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4. Class D license: Valid only for facilities operated under contract with an agency of the State of New Jersey.

(c) The annual fees for licenses shall be as follows:

1. Class A license: \$80.00 plus the amount determined in accordance with (c)5 below;

2. Class B license: \$90.00 plus the amount determined in accordance with (c)5 below;

3. Class C or Class D license: \$100.00 plus the amount determined in accordance with (c)5 below;

4. Any license, regardless of class, issued to a corporation, partnership or association: \$150.00.

5. Except as otherwise provided in (c)6 below, the fee for any license other than a license issued to a corporation, partnership or association shall include the following additional fee if the facility (or facilities) is (or are) occupied by, intended to be occupied by, six or more residents:

i. Six-10 residents-\$25.00;

ii. Eleven-15 residents-\$50.00;

iii. Sixteen or more residents-\$70.00.

6. The total fee for any license shall in no case exceed \$150.00.

(d) The licensee shall specify whether the licensee is licensed

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as an operator or as an owner and shall identify the property or properties, including occupied accessory buildings, operated or owned by the licensee. A separate endorsement shall be required for each building occupied by residents which is not an accessory building.

(e) Except as otherwise provided in the Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-1 et seq.), no license shall be issued to any person who has at any time been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person or other like offense or offenses, or to any partnership of which such person is a member, or to any association or corporation of which said person is an officer, director or employee or in which as a stockholder such person has or exercises a controlling interest either directly or indirectly.

(f) No license shall be issued to any person if the Bureau determines that the issuance of a license to such person would be contrary to the best interests of the residents of any rooming or boarding house or of the public generally.

(g) No owner shall employ any person not licensed as an operator to operate any rooming or boarding house. A separate operator shall be required for every building occupied by residents other than an accessory building.

(h) No license shall be issued to any person who has previously been denied a license by either the Department of Health or the Department of Human Services for reason of personal unfitness or who has had a license revoked by either the Department of Health or the Department of Human Services.

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(i) No license shall be issued to, or shall continue to be held by, any person, who, in a final adjudication by a court of record or by the Division on Civil Rights, has been found to have discriminated against any resident or prospective resident on the basis of race, color, creed, national origin or ancestry.

(j) A Class D license shall specify the type of facility for which it is issued. Except as otherwise provided in this chapter, any service which may be provided under a Class C license may be provided under a Class D license and any facility operated under a Class D license shall conform to all standards that would be applicable to the facility were it operated under a Class C license.

(k) On or after July 1, 1987, no license to own or operate a boarding house shall be issued to, or shall be continued to be held by, any person who has not completed a training course approved by the Department of Community Affairs. This subsection shall not apply to persons holding or applying for only Class A (rooming house) licenses and shall only be effective so long as there exists a training program funded by the Department of Human Services.

**5:27-1.7 License applications**

(a) Applicant information to be provided by an individual shall include the following:

1. Name, plus any other names ever used;
2. Present address, last previous address and any other addresses within the last two years, including dates of residency;

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3. Telephone number, if any;
4. Social security number;
5. Date of birth;
6. Bank or other credit reference;
7. Any criminal convictions;
8. Education and work experience;
9. Class of license for which application is made.

(b) Applicant information to be provided by a corporation, association or partnership shall include the following:

1. Names and addresses of all officers, directors, stockholders, members and partners and any registered agent;
2. Designation of primary owner and all information required pursuant to (a) above with respect to such primary owner.

(c) Building information shall be provided for each building owned, operated, or intended to be owned or operated by an applicant and used or intended to be used as a rooming or boarding house and shall include the following:

1. Street address and lot and block designation of the building;
2. Whether or not a license was ever previously issued

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by the Bureau for the use of the building as a rooming or boarding house;

3. The number of stories;
4. The number of sleeping rooms to be used to accommodate residents;
5. The maximum number of residents intended to be accommodated;
6. The year, or approximate year, of construction;
7. The construction class;
8. Whether or not the building was previously registered with the Bureau of Housing Inspection as a hotel or multiple dwelling and, if so, the registration number;
9. Whether or not the property was ever licensed by the New Jersey Department of Health, and if so, the license number;
10. Date of transfer of the property to the present owner;
11. The name and address of any mortgagee or other lien holder.

(d) In the event that any person who is licensed to use as a owner subsequently acquires another building which he intends to use as a rooming or boarding house, he shall submit to the Bureau a supplemental application containing the building information required pursuant to (c) above.



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(e) In the event of a change in any information provided to the Bureau pursuant to this section, the licensee shall notify the Bureau of such change within 14 days.

**5:27-1.8 Administrative hearings**

(a) Any person aggrieved by any ruling, action or order of the Bureau shall be entitled to an administrative hearing in accordance with the Administrative Procedure Act.

(b) The administrative hearing shall be conducted by a judge of the Office of Administrative Law and the final decision shall be issued by the Director.

(c) The application for such hearing must be filed with the Director within 15 days of the receipt of the applicant of notice of the ruling, action or decision complained of. The Director shall have authority to waive this requirement when the interests of justice so require.

**5:27-1.9 Exceptions**

(a) Pursuant to N.J.S.A. 55:13-5(b), an owner may request an exception waiving, modifying or postponing the application of any regulation to any owner's rooming or boarding house.

(b) Requests for exceptions shall be made to the Chief of the Bureau, who shall have authority to approve or deny such requests in accordance with the standards set forth in N.J.S.A. 55:13B-5(b). Requests shall be made in triplicate upon forms to be supplied by the Bureau.

(c) A request for an exception shall be submitted within 30

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days of the receipt by the owner of notice of the ruling, action or decisions at issue and no request submitted thereafter shall be considered unless the owner advised the Bureau of his desire to file an exception request within 15 days of his receipt of notice of filing, action or decision at issue and was unable to submit the application within 30 day period allowed because of the Bureau's failure to provide him with the required forms in a timely manner. The Chief of the Bureau shall have authority to waive these time requirements when the interests of justice so require.

(d) Upon the request of a State agency which has contractual relationship with the owner of a facility operated under a Class D license, the Bureau shall waive application of any regulation contained in subchapters six through eleven of this chapter, unless the Bureau finds that harm to residents or the public generally would thereby result.

**5:27-1.10 Search warrants**

(a) In the event that any authorized representative of the Bureau is denied access to any rooming or boarding house, a search warrant shall be obtained by the Bureau in any court having jurisdiction.

(b) The application for the search warrant shall state that access to the premises is required in order to enforce the Act and shall specify whether the desired inspection is a regular annual inspection or a special inspection in response to information received by the Bureau indicating the possible existence of a condition violative of the Act or of these regulations.

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“Assistive device” means any implement or mechanism which enables a person to be ambulatory who would not otherwise be ambulatory.

“Banking institutions” means and includes banks, trust companies, national banking associations, savings banks, savings and loan associations and Federal savings and loan associations.

“Boarding house”, See N.J.S.A. 55:13B-3(a).

“BOCA” means the Building Officials and Code Administrators International, Inc.

“Bureau” means the Bureau of Rooming and Boarding House Standards in the Division of Housing of the Department of Community Affairs.

“Commercial center” means a place where commercial establishments and professional offices may be found.

“Commissioner”. See N.J.S.A. 5:13B-3(b).

“Construction” means any and all work necessary or incidental to the erection, demolition, assembling, installing or equipping of buildings or any alterations and operations incidental thereto.

“Construction class” means the category in which a building or space is classified based on the fire-resistance ratings of its construction elements as set forth in the current edition of the BOCA Basic Building Code.

“County welfare board” means the welfare board or board

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of social services of the county in which the rooming or boarding house is located.

"dba" means decibels, which is the numerical expression of the loudness of a sound.

"Director" means the Director of the Division of Housing of the Department of Community Affairs.

"Egress" means a path by which ambulatory persons can travel safely and without assistance from a unit of dwelling space along a continuous and unobstructed line to an exterior open area.

"Exit" means a means of egress from the interior of a building to an open exterior space.

"Financial services". See N.J.S.A.55:13B-3(c).

"Fire resistance ratings" means the time in hours or fractions thereof that materials or their assemblies will withstand fire exposure as determined by a fire test made in conformity with recognized standards.

"Garbage" means organic waste resulting from the preparation and consumption of food.

"Habitable room" means a residential room or space in which the ordinary functions of domestic life are carried on, including bedrooms, living rooms, studies, recreation rooms, kitchens, dining rooms, and other similar spaces, but excluding closets, halls, stairways, laundry rooms, toilet rooms and bathroom.

"HFA" means the New Jersey Housing Finance Agency.

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“Licensee” means any person licensed by the Bureau as either an owner or an operator.

“Local health agency” means any county, regional, municipal or other governmental agency organized for the purpose of providing health services, administered by a full-time health officer and conducting a public health program pursuant to law.

“Means of egress”. See “egress”.

“Monitoring of medication” means maintaining regular records of the type and amount of medication taken by a resident and the time at which such medication is taken.

“NFPA” means the National Fire Protection Association.

“Occupant” means any person lawfully occupying or sharing occupancy of a unit of dwelling space on a regular basis.

“Operator”. See N.J.S.A.55:13B-3(e).

“Owner”. See N.J.S.A.55:13B-3(f).

“Partition” means a vertical unit or assembly of materials that separates one space from another within any story of a building.

“Personal services”. See N.J.S.A.55:13B-3(g).

“Primary owner” means the individual designated by an owner that is a corporation or association as personally responsible for compliance with the act and with these regulations.

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"Resident" means a persona residing in a rooming or boarding house exclusive of the owner and his family, and bona fide employees and the operator and his family.

"Rooming house". See N.J.S.A.55:13B-3(h).

"Rooming unit" means a unit of dwelling space forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

"Rubbish" means all waste material other than garbage.

"Shall" as used in these regulations, is always to construed as mandatory.

"Story, cellar" means any story below the first story.

"Story, first" means the lowest story which contains habitable or occupiable rooms and which is more than 50 percent above grade. A story shall be considered more than 50 percent above grade whenever the number of stair risers to grade at any required exit from the lowest story shall be equal to less than half the number of stair risers in any stair connecting the lowest story with the next above.

"Story, ground" means any first story which provides barrier free access to grade at each of its required means of egress.

"Story" means that portion of a building that is between a floor level and the next higher level or roof above.

"Supervision of self-administration of medication" means dispensing by a licensee to a resident of medication in the custody

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of the licensee, whether in a container or otherwise.

"Travel distance" means the maximum length of exitway access travel, measured from the most remote point to an approved exit along the natural and unobstructed line of travel.

"Uniform Construction Code" means N.J.S.A. 52:27D-119 et seq., N.J.A.C.5:23-1.1 et seq., and the subcodes adopted pursuant thereto.

"Unit of dwelling space". See N.J.S.A.55:13B-3(j).

"Unit of egress" means the maximum number of people by whom an egress is designed to be used.

**5:27-3.1 Enumeration of rights**

(a) Every resident shall have the following rights:

1. To manage his own financial affairs;
2. To wear his own clothing;
3. To determine his own dress, hairstyle, or other personal effects according to individual preference;
4. To retain and use his personal property in his immediate living quarters, so as to maintain individuality and personal dignity, except where the licensee can demonstrate that such would be unsafe, that it would be impractical or would infringe upon the rights of others and that mere convenience is not the licensee's motive in restricting this right;

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5. To receive and send unopened correspondence;
6. To have unaccompanied access to a telephone at a reasonable hour (but not the right to make toll calls at any other person's expense) and to have a private telephone at his own expense;
7. To privacy;
8. To retain the services of his own personal physician at his own expense or under a health care plan and to confidentiality and privacy concerning his medical condition and treatment;
9. To unrestrict communication, including personal visitation, with any person of his choice, at any reasonable hour;
10. To make contacts with the community to achieve the highest level of independence, autonomy and interaction with the community of which he is capable;
11. To present grievances on behalf of himself or others to the licensee, governmental agencies or other persons without reprisal or threat of reprisal in any form or manner whatsoever;
12. To a safe, healthful and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident;
13. To refuse to perform services for the licensee except pursuant to a bona fide contract between resident and licensee, such contract, in the case of a resident who is at least 62 years of age or has any physical or mental disability, to be in writing



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and witnessed by a representative of the county welfare board or of any other social service agency having responsibility for such resident.

14. To practice the religion of his choice, including the right to have adequate substitutes provided for foods or combinations of foods which the resident's religious beliefs forbid him to eat, or to abstain from religious practice;

15. To not be deprived of any constitutional, civil or legal right solely by reason of resident in a rooming or boarding house.

**5:27-3.2 House rules**

(a) In order to better protect the health, safety, welfare and rights of all residents, the licensee shall establish reasonable rules governing the conduct of persons within the rooming or boarding house.

(b) Such rules shall include provisions to ensure that residents exercise their rights in such a way as not to infringe upon the rights of or endanger other residents.

(c) Copies of all rules shall be prominently posted in the building, shall be given to all residents at the commencement of residence and shall be provided to the Bureau upon request.

(d) Any rule determined by the Bureau to be unreasonable shall not be enforced and shall be deleted from the house rules.

**57:27-3.3 Harassment; fraud; eviction without due cause**

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(a) No licensee or employee or agent of a licensee shall engage in any conduct or permit residents or others to engage in any conduct, which is unreasonable under the circumstances and which tends to cause annoyance to any resident.

(b) No licensee or employee or agent of a licensee shall, in the course of his dealings with residents or with their property, engage in any conduct evidencing a lack of probity, integrity or trustworthiness.

(c) Unless otherwise directed by the Bureau no licensee shall cause any resident to be evicted from any rooming or boarding house except for good cause, as defined in N.J.S.A. 2A:18-61.1 et seq., and except in accordance with the procedural requirements of N.J.S.A. 2A:18-61.1 et seq.

**5:27:3.4 Access to agency representatives**

(a) Licensees shall not in any manner obstruct, and shall affirmatively facilitate, access for employees of public agencies and private social service and health agencies seeking to visit any resident or to have contact with the residents generally.

(b) A licensee who has reason to believe a resident to be in need of health or social services shall forthwith refer such resident to an appropriate agency.

(c) A licensee shall give notice to the county welfare board at least three working days prior to instituting any action to evict any resident or to any transfer of a resident initiated by a licensee, unless the county welfare board allows shorter notice.

(d) Every licensee shall provide to each resident or pose, as

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the case may be, copies of such documents as the Bureau or any other public agency may prepare, for distribution to residents or posting.

**5:27-3.5 Appropriate placement**

(a) No licensee shall accept as a resident in a rooming or boarding house a person who is not ambulatory, with or without assistive devices who is not certified by a physician to be free of communicable diseases and not in need of nursing care or who requires services not available in such rooming or boarding house. The foregoing notwithstanding, a person who is not ambulatory but who is capable of moving unassisted from room to room with the aid of an assistive device or a wheelchair may be accepted for residence on the ground floor of a rooming or boarding house that is fully covered by a sprinkler system.

(b) In the event that a resident ceases to be ambulatory, acquires a communicable disease or requires nursing care, supervision of self-administration of medication or services not available in the rooming or boarding house, it shall be the responsibility of the licensee to so notify the county welfare board forthwith so that the resident may be transferred to a facility suitable to his needs.

**5:27-3.6 Independence and community interaction**

A licensee shall take such affirmative action as may be necessary to assist each resident in living with as much independence and autonomy and with as high a degree of interaction with the community as may be reasonably possible.

**5:27-3.7 Violation by licensee**

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No licensee shall violate or unreasonably restrict the rights of residents nor shall any licensee permit the violation of unreasonable restriction of residents' rights by any person employed by or otherwise under the control of the licensee or upon the premises with the knowledge of the licensee.

**5:27-3.8 Employees**

(a) No licensee shall employ or continue to employ any person known to the licensee to have engaged in conduct violative of the rights of residents or who the licensee has reason to believe would be likely to engage in such conduct.

(b) Every licensee shall have on duty at all times as many employees as may be needed to properly safeguard the health, safety and welfare of the residents, as required by these regulations. Such employees shall be adequately trained and supervised.

**5:27-3.9 Disclosure of licensee identity**

(a) A statement containing the following information shall be posted in a prominent place in every rooming and boarding house:

(1) Name and address of the owner(s) of the property;

(2) Name and address of any operator;

(3) If the owner is a corporation, the name and address of each appropriate officer, of the registered agent and of the primary owner;

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(4) If the owner does not reside on the premises, a statement designating the operator as the owner's agent for purposes of accepting notices from residents, issuing receipts therefore and accepting service of process on behalf of the owner;

5. The name and address of any person other than the operator employed by the owner to provide regular maintenance service;

6. The name, address and telephone number of an individual authorized to make emergency decisions concerning the building and any repair thereto or expenditure in connection therewith;

7. The name and address of every holder of a recorded mortgage on the premises.

(b) Copies of the statement required pursuant to (a) above shall be given to each resident at the commencement of residence and provided to the Bureau, and to the county welfare board, marked with proof of filing in the office of the clerk of the municipality in which the rooming or boarding house is located.

(c) Revised statements shall be furnished within seven days of any change in the information required to be set forth.

(d) All statements and revised statements furnished pursuant hereto shall be signed by the owner or the duly authorized representative of the owner and shall stipulate the date of preparation.

*Appendix G***5:27-1.12 Separability clause**

If any provisions of these regulations shall be held invalid or ineffective in whole or in part, or inapplicable to any person or situation, it is the purpose and intent of these regulations that all other provisions thereof shall nevertheless be separately and fully effective.

**SUBCHAPTER 2. DEFINITIONS****5:27-2.1 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Accessory building” means a building, whether or not occupied by residents, the use of which is incidental to that of the main building of a rooming or boarding house and which is located on the same lot, or on a contiguous lot, or on a lot that would be contiguous but for the presence of a public street or other public right-of-way.

“Act” means the Rooming and Boarding House Act of 1979 (P.L. 1979, c. 496; N.J.S.A. 55:13B-1 et seq.).

“Alteration” means a change or rearrangement in the structural parts or in the egress facilities of any building or structure, or any enlargement thereof or the moving of such building or structure from one location to another.

“Ambulatory” means capable of walking up and down stairs without the assistance of another person.

“Approved” means approved by the Bureau.

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SUBCHAPTER 4, GENERAL BUILDING REQUIREMENTS

\* \* \*

SUBCHAPTER 5, FIRE SAFETY

\* \* \*

SUBCHAPTER 6, SECURITY

\* \* \*

SUBCHAPTER 7, RESIDENTS' COMFORT

**5:27-7.1 Housekeeping**

(a) A licensee shall supply to every resident a fresh change of bed linen and towels, all of which shall be in good condition, at least once a week and whenever there is a change of occupancy. Soap and toilet paper shall also be provided.

(b) A licensee shall provide housekeeping and interior maintenance at least once weekly and whenever there is a change in occupancy.

(c) This section shall not apply to rooming house units for which the lease or other occupancy agreement expressly excludes such services.

As amended, R.1981 d.359 , eff. October 8, 1981.

See: 13 N.J.R. 393(a), 13 N.J.R. 704(c).

(c) added.

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**5:27-7.2 Bedrooms**

(a) Each resident shall be provided with a comfortable bed of adequate size and with sufficient blankets and other bedding of standard quality.

(b) Only spaces unobstructed by doors, windows and radiators shall be used for placement of beds.

(c) No person shall be housed in the same rooming units as another person not related by blood or marriage except by mutual consent, provided that a provision for general consent to sharing of a rooming unit may be included in a lease or other occupancy agreement.

(d) Each resident shall be provided with sufficient dresser and closet space within the rooming unit for the storage of his clothing and other personal articles.

**5:27-7.3 Living and dining rooms**

(a) At least one living room shall be provided for use by residents. Such living room(s) shall contain comfortable chairs sufficient to provide seating for at least two-thirds of the residents or intended residents at any one time.

(b) Living rooms shall have sufficient space for socializing and for such recreational activities as card playing, reading, letter writing and watching television.

(c) Smoking may be permitted in designated living room areas, but smoke-free living room areas shall also be provided. Smoking areas shall be inspected by the licensee for evidence of



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fire every evening after residents have retired to their bedrooms.

(d) Dining rooms shall be of sufficient size and properly equipped to comfortably seat all residents or intended residents at any one time.

(e) This section shall apply to boarding houses only.

**5:27-7.4 Outdoor facilities and recreation**

(a) In every boarding house having a lawn, deck or porch or other outdoor area suitable for use by residents, sufficient chairs shall be available to accommodate as many residents as can comfortably be seated there.

(b) Where feasible in boarding houses, recreational equipment suitable for use by the residents shall be provided.

(c) Every licensee shall take such action as may be reasonable to encourage the use by residents of recreational facilities available in the community.

**SUBCHAPTER 8. MAINTENANCE OF RECORDS**

**5:27-8.1 Resident records**

(a) It shall be the duty of each licensee to maintain an orderly file with respect to each resident containing at least the following information:

1. Full name of resident;
2. Date of birth;

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3. Last previous address;
4. Name and address of the persons and/or agencies, if any, responsible for referring the resident to the rooming or boarding house and maintaining contact with him;
5. Name, address and telephone number of personal physician, if any;
6. Name, address and telephone number of next of kin or other person interested in the resident's well-being;
7. Date of commencement of occupancy;
8. Last date of occupancy and copy of death certificate if occupancy was terminated by the resident's death;
9. Any complaints made by or about the resident, the date of such complaint and action taken by the licensee.

(b) Each resident's file shall contain at least the following documents:

1. Physician's certification, as to general state of health and any illnesses or disabilities and medication required;
2. Copy of a lease or other occupancy agreement, signed by both the licensee and the resident, clearly stating the services to be provided by the licensee and the charge to the resident for such services, said agreement to be witnessed, in the case of a resident at least 62 years of age or having any mental or physical disability, by a representative of the county welfare board or of

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any other social service agency having responsibility for such resident;

3. Acknowledgment by the resident that he has received a copy of the rules and regulations of the rooming or boarding house and agrees to abide by them;

4. A record of all property of the resident entrusted to the licensee, including, in the case of any resident receiving financial services, a ledger as required pursuant to N.J.A.C. 5:27-8;

5. Any other written agreement between the licensee and the resident.

(c) No resident's file shall be made available without the resident's consent to any person other than the licensee, the resident, or a duly authorized representative of the Bureau, the county welfare board or other public agency having reasonable cause to have access to the file, all of whom shall have access to the file at any reasonable time.

(d) In a rooming house, a licensee need only maintain the items listed in (a)1 and 7 above for residents under 62 years of age and items listed in (a)1, 2, 5, 6, and 7, and (b)3 above for residents 62 years of age or over.

**5:27-8.2 Financial records**

(a) Every licensee shall keep orderly and complete records of the source and amount of all funds received in connection with the operation of each rooming and boarding house and the nature and amount of each expenditure made in connection therewith.

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Payments made to or profits retained by licensees shall be clearly stated.

(b) All financial records maintained by any licensee in connection with any rooming or boarding house shall be made available by the licensee to the Bureau upon request of any duly authorized representative of the Bureau.

**5:27-8.3 Additional requirements**

(a) The Bureau, upon determining that records maintained by a licensee are disorderly or inadequate in any way, or that violations of the act or of these regulations exist which have not been terminated within the period of time allowed by the Bureau for such termination, may order the licensee to maintain such additional records, or maintain his records in such manner, as the Bureau may prescribe.

(b) It shall be the duty of any licensee to whom an order issued pursuant to (a) above to comply with such order forthwith.

**5:27-8.4 Record retention**

(a) All required financial records shall be retained for a period of at least five years from the date of the record.

(b) All required resident records shall be retained for a period of at least five years after the resident ceases to reside at the rooming or boarding house.

(c) The Bureau shall have discretion to allow earlier disposal, or require longer retention, of specific records or categories of records in specific cases.

*Appendix G***SUBCHAPTER 9. FOOD AND LAUNDRY SERVICES****5:27-9.1 Applicability**

(a) The standards in this subchapter shall apply only to boarding houses operated under either a Class B or Class C license.

(b) Neither food services nor laundry services shall be provided or offered to be provided in any rooming house operated under a Class A license.

**5:27-9.2 Diet and menu**

(a) Every resident shall be provided with a nutritionally adequate diet that is of good quality food, correctly prepared, attractively and properly served in sufficient quantity and in a form and texture that will meet his nutritional needs, take into account his food preferences and be appetizing.

(b) The daily diet for each resident shall include servings from each of the following food groups in an amount that is nutritionally adequate in light of the resident's age, weight and physical condition:

1. Milk or milk products;
2. Vegetables and fruits, including at least one serving per day of citrus fruit or juice;
3. Whole grain, enriched, fortified or restored bread or cereal;
4. Meat, poultry, fish and eggs.

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(c) Menus shall be prepared on a weekly basis. All menu items shall be specifically stated.

(d) All menu changes and substitutions shall be recorded. Records of foods served shall be retained for three weeks following the date of service.

**5:27-9.3 Food service**

(a) Each resident shall be served at least three well-balanced and appetizing meals per day on a regular schedule and at reasonable intervals.

(b) Food and beverages shall be available to residents in reasonable quantities for between-meal and evening snacks.

(c) Any modified diet prescribed by a physician shall be conscientiously followed.

(d) Adequate dishes, utensils and napkins shall be provided. Salt, pepper and sugar and other condiments shall be provided as appropriate and in suitable containers.

(e) A reasonable amount of time shall be allowed for each resident to eat his meal.

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**SUBCHAPTER 10. OTHER PERSONAL SERVICES**

**5:27-10.1 Applicability**

(a) The standards in this subchapter shall apply only to

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boarding houses operated under a Class C license providing or offering to provide the personal services specified.

(b) No rooming house operated under a Class A license and no boarding house operated under a Class B license shall provide or offer to provide the personal services specified in this subchapter.

**5:27-10.2**

(a) Assistance in dressing shall be provided only by a person whom the resident consents to have assist him.

(b) The resident's preference in selection of clothing shall be respected.

(c) To the extent that the resident gives discretion in the choice of clothing to the person providing assistance in dressing, that discretion shall be exercised so as to dress the resident in comfortable clothing suitable to the season coordinated in a harmonious manner.

(d) Assistance in dressing and undressing shall be provided at reasonable times so that a resident is not unduly delayed in commencing his daily activities or in going to bed. Sufficient time shall be allowed in light of the resident's physical condition.

**5:27-10.3 Assistance in bathing and personal hygiene**

(a) Assistance in bathing and personal hygiene shall be provided only by a person whom the resident consents to have assist him.

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(b) Assistance in bathing and personal hygiene shall be provided at reasonable times so that a resident is not unduly delayed in commencing his daily activities or in going to bed. Sufficient time shall be allowed in light of the resident's physical condition.

(c) Any bath or shower used by residents requiring assistance shall have handrails and treads.

(d) Assistance in personal hygiene shall include assistance in oral hygiene, hair washing and grooming, manicure, pedicure and shaving, as required.

**5:27-10.4 Transportation to health services**

(a) Transportation shall be provided to medical and dental offices and other health facilities as required for treatment and for check-ups at least once annually.

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**SUBCHAPTER 11. FINANCIAL SERVICES**

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**SUBCHAPTER 12. FIRE SAFETY LOANS**

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No. 88-298

Supreme Court, U.S.

FILED

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In The  
Supreme Court of the United States  
October Term, 1988

MARKET STREET MISSION,

*Appellant,*

vs.

BUREAU OF ROOMING AND BOARDING HOUSE  
STANDARDS, DEPARTMENT OF COMMUNITY  
AFFAIRS, STATE OF NEW JERSEY,

*Appellee.*

ON APPEAL FROM THE SUPREME COURT OF NEW  
JERSEY

MOTION OF APPELLEE TO DISMISS OR AFFIRM

JAMES J. CIANCIA  
Assistant Attorney  
General  
*Of Counsel*

EUGENE J. SULLIVAN  
Assistant Attorney  
General

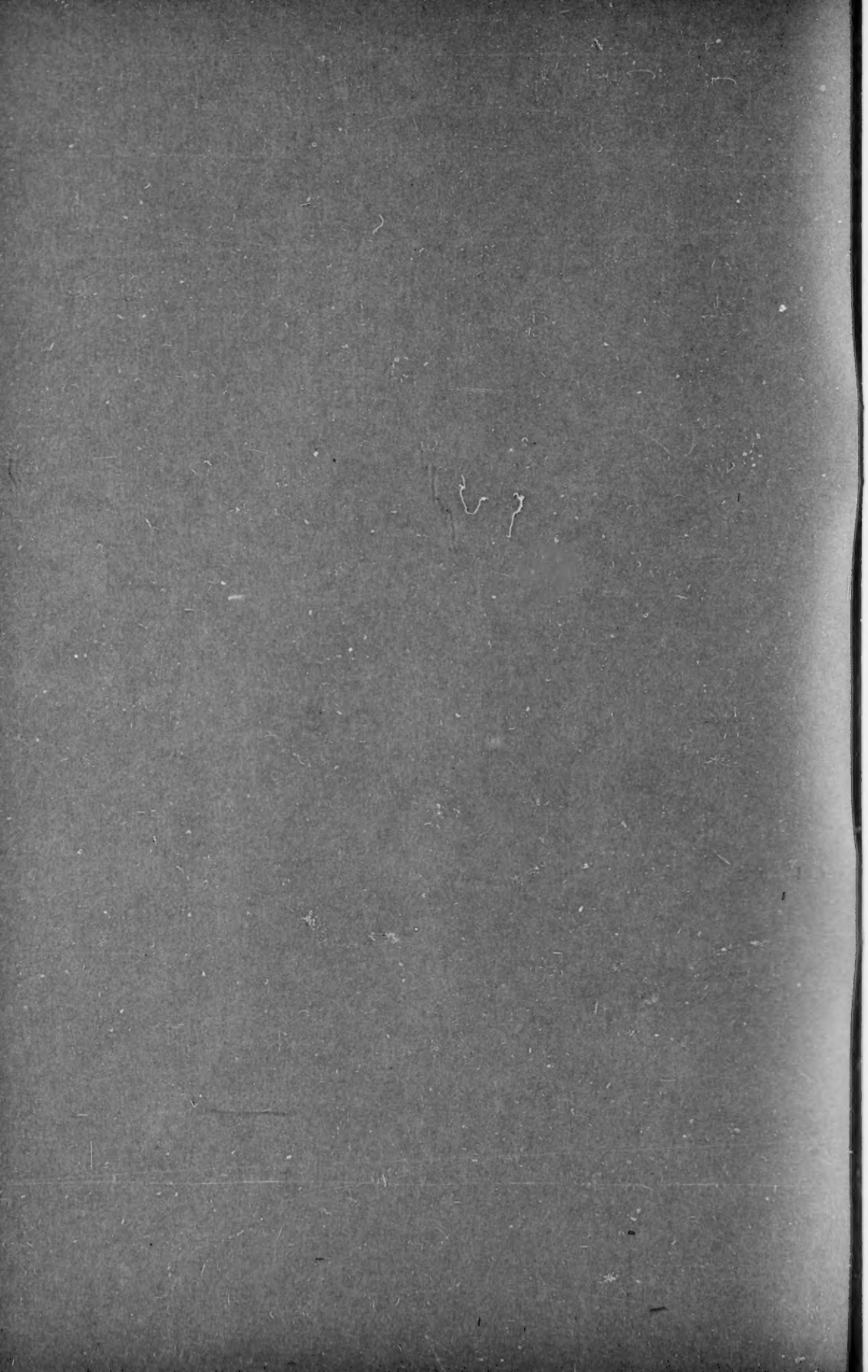
JOHN J. CHERNOSKI  
Deputy Attorney  
General  
*On the Brief*

CARY EDWARDS

ATTORNEY GENERAL OF  
NEW JERSEY

*Attorney for Appellee, Bureau of  
Rooming and Boarding House  
Standards, Department of  
Community Affairs, State of  
New Jersey*

R. J. Hughes Justice Complex  
CN 112  
Trenton, New Jersey 08625  
(609) 292-8564



## QUESTION PRESENTED

Does Market Street Mission have the right, under the Free Exercise Clause or the Establishment Clause of the First Amendment or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, to operate a boarding facility for homeless and socially handicapped individuals without complying with a State statute which provides standards for the health and safety of boarding facilities and which protects the residents of these facilities from abuse and exploitation, where the statute and pertinent regulations apply generally to all boarding houses and do not conflict with any religious beliefs of the Mission, and where they create rights in third parties, namely residents of boarding houses, which would be sacrificed if the Mission were exempted from the law?

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No. 88-298

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In The  
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MARKET STREET MISSION,

*Appellant,*

vs.

BUREAU OF ROOMING AND BOARDING HOUSE  
STANDARDS, DEPARTMENT OF COMMUNITY  
AFFAIRS, STATE OF NEW JERSEY,

*Appellee.*

---

ON APPEAL FROM THE SUPREME COURT OF NEW  
JERSEY

---

MOTION OF APPELLEE TO DISMISS OR AFFIRM

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The appellee respectfully moves pursuant to Rule 16(1)(b) and (d) to dismiss this appeal or affirm the judgment of the Supreme Court of New Jersey on the grounds that the constitutional questions presented are so insubstantial as to obviate the need for further review, and also because the case does not raise any issues of

special importance, does not conflict with federal precedent, and was correctly decided below.

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### COUNTERSTATEMENT OF THE CASE

In response to several tragic fires that occurred in New Jersey boarding facilities and which resulted in fatalities, the New Jersey Legislature enacted the Rooming and Boarding House Act of 1979, *N.J.S.A. 55:13B-1 et seq.* (hereinafter "Act") (Aa8).<sup>\*</sup> The Legislature found in part that the residents of these facilities were predominately the poor, elderly, and disabled and were in need of social, personal, and financial services and protection from building hazards and from unscrupulous and predatory neighbors. *N.J.S.A. 55:13B-2.*

A "boarding house" includes facilities which contain two or more units of dwelling space arranged or intended for single room occupancy, which offer the residents financial services or personal services such as meals, and at which more than 15% of residents remain for more than 90 days. *N.J.S.A. 55:13B-3(a), (c), (d), (g), (i), (j).* A "rooming house" is a facility which does not offer financial or personal services. *N.J.S.A. 55:13B-3(h).* Excluded from the Act are foster homes, community residences for the developmentally disabled or for the mentally ill, dormitories owned or operated by nonprofit educational institutions for the exclusive use of their students, facilities occupied exclusively by college students, facilities

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<sup>\*</sup> "Aa" refers to the appendix to appellant's jurisdictional statement.

under contract with State agencies, and single family residences made available to not more than six guests and which are owned or operated by a nonprofit religious or charitable institution and where the owner derives no income from the occupancy. *N.J.S.A. 55:13B-3(c)*.

The Legislature mandated the Commissioner of the New Jersey Department of Community Affairs (hereinafter "Commissioner") to promulgate regulations to ensure that all rooming and boarding houses be operated to protect the health, safety, and welfare of the residents. *N.J.S.A. 55:13B-6*. These regulations are to include standards for: safety from fire; safety from structural, mechanical, plumbing, and electrical deficiencies; adequate light and ventilation; physical security; protection from harassment, fraud, and eviction without due cause; clean and reasonably comfortable surroundings; adequate personal and financial services; disclosure of owner identification; maintenance of financial and occupancy records; referral of residents if needed to social service and health agencies; assurance that no constitutional, civil or legal right will be denied the residents; reasonable access by public and private agencies to visit the residents; and an opportunity for each resident to live with as much independence, autonomy and interaction with the surrounding community as he is capable of. *N.J.S.A. 55:13B-6(a) to (m)*. Further, the Act requires that these facilities to be licensed and that the Commissioner periodically inspect the facilities for compliance with the regulations. *N.J.S.A. 55:13B-7, N.J.S.A. 55:13B-9*. The Act also provides for its enforcement by the institution of

administrative and judicial proceedings. *N.J.S.A. 55:13B-10, N.J.S.A. 55:13B-11, N.J.S.A. 55:13B-11.1.*

The Act contains a supplemental section that includes a resident's "Bill of Rights," *N.J.S.A. 55:13B-17 et seq.*, which provides for the individual dignity of the residents and protects them from abuse and exploitation. The "Bill of Rights" provides that a resident has the right: to manage his own financial affairs; to wear his own clothing; to determine his own dress and hair style; to retain and use his personal property; to receive and send unopened correspondence; to reasonable access to a telephone; to privacy; to retain the services of his own physician; to communicate with any person at reasonable hours; to contact with the community; to present grievances to the facility operator and governmental agencies; to a safe and decent living environment; to refuse to perform service at the facility unless agreed to by the resident; to practice the religion of his choice; and not to be deprived of any constitutional, civil or legal right. *N.J.S.A. 55:13B-19.*

As required by the Legislature, *N.J.S.A. 55:13B-6*, the Commissioner has promulgated standards for rooming and boarding houses. *N.J.A.C. 5:27-1.1 et seq.* These regulations provide for: a licensing mechanism, *N.J.A.C. 5:27-1.1 et seq.*; the rights of the residents which essentially repeats the "Bill of Rights," *N.J.A.C. 5:27-3.1 et seq.*; the establishment of general building, fire safety, and security requirements; *N.J.A.C. 5:27-4.1 et seq.*, *N.J.A.C. 5:27-5.1 et seq.*, *N.J.A.C. 5:27-6.1 et seq.*; the establishment of nutrition and health standards, *N.J.A.C. 5:27-7.1 et seq.*, *N.J.A.C. 5:27-9.1 et seq.*; and the maintenance of records of residential and financial information. *N.J.A.C. 5:27-8.1 et*

*seq.* The Legislature has also provided in the Act that the regulations may be waived, modified, or postponed by the Commissioner upon application of the facility's owner if "(1) strict compliance with a regulation would result in undue hardship for the residents of the facility and (2) if granted, it would not unreasonably jeopardize the welfare of residents or the public at large." *N.J.S.A. 55:13B-5(b)*.

Market Street Mission, a religious organization devoted, in part, to spreading the gospel to socially handicapped individuals operates a boarding house in Morristown, New Jersey, even though it has never been licensed as such (Aa35). The facility is a three-story brick building containing sleeping, eating, and living facilities for about 50 socially handicapped individuals who reside at the facility for an initial 90-day period (Aa35). While living at the facility, the residents must attend religious services and participate in work therapy (Aa6). As conceded by the Mission, the facility is a "boarding house" (Aa20 to Aa21).

The state of New Jersey has no interest in regulating or inquiring into the religious program of the Mission (Aa6). The State recognizes in its enforcement of the Act, that the Mission may lawfully require the residents of the facility to participate in its religious program as a condition of residence. The failure of a resident to participate in the program would permit the Mission to lawfully terminate a resident's occupancy. Further, the Mission has not offered the Commissioner, the New Jersey courts, or this Court the existence of any of its religious beliefs or tenets, which conflict with the Act or the regulations. Assuming such a conflict does exist, the Act provides a

mechanism to accommodate these religious beliefs, thus facilitating compliance with the Free Exercise Clause where required. N.J.S.A. 55:13B-5. These constitutionally required accommodations could be achieved by the Commissioner's promulgation of regulations which recognize the nature of the Mission's operation or by the Commissioner's waiver, modification, or postponement of particular regulations. Notwithstanding the availability of this mechanism, the Mission has sought to invalidate the entire Act, without seeking a license which recognizes and respects its religious program.

The instant controversy began when an inspection was conducted on January 9, 1984, by the Bureau of Rooming, and Boarding House Standards (hereinafter "Bureau"), which administers the Act on behalf of the Commissioner (Aa35). The Bureau issued an inspection report and order requiring the Mission to abate certain fire safety violations at its facility by March 9, 1984 (Aa35 to Aa36). These violations included the failure to have fire rated doors, an automatic sprinkler system, a proper second means of egress, emergency lighting, automatic smoke detectors, and a fire alarm system, and the existence of a fire hazard created by improper electrical wiring (Aa36 to Aa38). Thereafter on March 12, 1984, the Bureau conducted a reinspection of the premises (Aa36). As the previously cited violations remained unabated, the Bureau assessed a penalty in the amount of \$3,050 (Aa36). Thereafter, instead of correcting the fire safety violations, which continue to exist, Market Street Mission filed an administrative appeal challenging the Bureau's jurisdiction and the applicability of the Act to religious nonprofit corporations (Aa3).

On July 12, 1985, the Administrative Law Judge issued his initial decision (Aa31 to Aa49). He concluded the even though Market Street Mission was a religious organization, its facility was a boarding house and subject to the Act (Aa42). Further, he rejected the Mission's argument that the Act as applied to the Mission violated the Religious Clauses of the First Amendment (Aa48). He also concluded that the penalty was reasonable (Aa48). On August 12, 1985, the Commissioner rendered his Final Decision and adopted the Administrative Law Judge's recommendations (Aa50). However, the Commissioner provided the penalty would be waived if the Mission submitted a license application and agreed to an abatement schedule to correct the violations (Aa50). Rather than abating the serious fire safety violations and submitting a license application, the Mission filed an appeal in the New Jersey Superior Court, Appellate Division (Aa13).

The Appellate Division issued its decision on April 23, 1987 (Aa13 to Aa30). The court noted that the Mission objected to a few of the provisions of the Act and regulations as incompatible with its religious purpose, even though the Bureau had not sought to enforce these provisions (Aa21). Specifically, the Mission objected to the right of a resident to practice the religion of his choice, to the authority of the Bureau to review its house rules and financial records, and the requirement that residents only be evicted from the facility in accordance with state law (Aa21). However, the court did not address the constitutional issues implied in this facial attack on the Act and the regulations (Aa30). The court concluded the entire



statutory and regulatory scheme was inapplicable to non-profit charitable organizations, such as the Mission, which offer their services without charge to the homeless and socially handicapped individuals (Aa26).

As the Act was clearly intended to afford protection to homeless and socially handicapped individuals, the State sought further review of the decision in the New Jersey Supreme Court (Aa4). The Supreme Court granted the State's petition for certification (Aa4). The Supreme Court on May 19, 1988, reversed the Appellate Division's decision (Aa1 to Aa12). The Supreme Court concluded that the case required a delicate balancing of secular and sacred interests, but "under New Jersey law a challenged statute will be construed to avoid constitutional invalidity if the provision is 'reasonably susceptible to such interpretation.' (citation omitted)" (Aa7). The Supreme Court concluded that the Act was remedial legislation intended to protect the health, safety, and welfare of those who reside in rooming and boarding houses (Aa8 to Aa9). Further, the Supreme Court in examining a 1985 amendment to the Act, 1985 *N.J. Laws*, Chap. 364, which excluded certain small boarding facilities operated by nonprofit or religious organizations, determined that the Legislature had originally intended the Act to include boarding facilities owned by religious or nonprofit organizations (Aa9 to Aa10). Accordingly, the Supreme Court found that the Legislature intended the Act to be extended as far as its constitutional reach would permit (Aa10).

In addressing the First Amendment issue the New Jersey Supreme Court stated "that religious institutions



do not enjoy an absolute immunity from worldly burdens" (Aa7). The Supreme Court in balancing the interests of the State and the interests of religious institutions stated that it would not void the Act's general requirements merely because that may be applied in an unconstitutional manner (Aa11). The Supreme Court expressed confidence that the Bureau would exercise its authority in the least restrictive manner in order to achieve the State's safety concerns and thereby avoid any excessive entanglement in religious affairs (Aa11). The Supreme Court also indicated that it would not tolerate any unnecessary intrusions by the Bureau into the religious affairs of the Mission (Aa11 to Aa12). Accordingly, the Supreme Court found "that the State's program for licensing rooming and boarding houses applies to sectarian institutions and the facially the Act neither unduly interferes with the free exercise of religion nor creates an excessive State entanglement with religion" (Aa12).

Market Street Mission on August 1, 1988, filed a Notice of Appeal with this Court pursuant to 28 U.S.C. §1257(2) (Aa51). Thereafter, the appellant filed a Jurisdictional Statement. This motion on behalf of the appellee followed.

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### ARGUMENT

AS INTERPRETED BY THE SUPREME COURT OF NEW JERSEY, THE ROOMING AND BOARDING HOUSE ACT IS INTENDED TO PROTECT THE RESIDENTS OF ROOMING AND BOARDING FACILITIES OPERATED BY RELIGIOUS AND SECULAR ORGANIZATIONS AND IT DOES NOT IMPLICATE ANY QUESTION OF CONSTITUTIONAL SIGNIFICANCE SO AS TO WARRANT PLENARY REVIEW BY THE COURT.

The appellant argues that the Religious Clauses of the First Amendment permit a sectarian organization to operate a boarding facility for homeless and socially handicapped individuals, without complying with a State statutory scheme which is intended to protect the health, safety, and welfare of these residents. Further, the Mission avers that the Act has been selectively enforced against it in violation of the Establishment Clause and the Equal Protection Clause.

This legislation was prompted by a public concern to protect the residents of these facilities, who are predominantly elderly, disabled, and poor, from building hazards and unscrupulous and predatory neighbors. *N.J.S.A. 55:13B-2*. The appellant would have this remedial legislation struck down so that it may offer food, clothing, and shelter to homeless and socially handicapped persons in any manner it deems appropriate.

The appellant has erroneously concluded that the Religious Clauses of the First Amendment permit a sectarian organization to care for the homeless and socially handicapped without regard to any interest the State may

have to protect their health, safety and welfare and without regard to the basic rights enjoyed by these persons. Further, the rights enjoyed by an individual do not evaporate simply because he is within the confines of a facility controlled by a religious institution. As observed by the New Jersey Supreme Court, the First Amendment does not mandate that the State's legitimate concerns end at the Mission's doors (Aa10 to Aa11). Therefore, the Religious Clauses of the First Amendment do not permit the rights of a sectarian organization to eclipse the rights of homeless and socially handicapped individuals who have turned to a religious organization for the necessities of life.

Also, the appellant has erroneously concluded that the Equal Protection Clause and the Establishment Clause require the Act to be applied to the facilities of religious institutions which do not house the homeless and socially handicapped. The appellant then concludes that the failure to apply the Act to these facilities renders the Act void. As conceded by the appellant the New Jersey Supreme Court did not address the issue (Ab6).<sup>\*</sup> However, neither the Equal Protection Clause nor the Establishment Clause requires religious facilities which are different in fact to be treated the same under law.

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<sup>\*</sup> "Ab" refers to the appellant's Jurisdictional Statement.

**A. The Act and the Regulations Which Are Intended to Protect the Health, Safety, and Welfare of Residents of Rooming and Boarding Facilities Do Not Inhibit Appellant's Free Exercise of Religion.**

Market Street Mission argues that the Free Exercise Clause requires it should be exempted from a law applicable to rooming and boarding houses, since compliance with the law will interfere with its religious mission. However, the Free Exercise Clause only prohibits the government from placing restriction on religious beliefs, not actions, even if the actions are required by a religious belief, if these actions are in violation of social duties or subversive of good order. *Reynolds v. United States*, 98 U.S. 145, 164 (1879).

To be entitled to the protection of the Free Exercise Clause the initial inquiry is whether the claim is rooted in a religious belief. *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). Because a claim is made by a religious organization does not mean the claim is rooted in a religious belief. Rather, the specific religious belief or tenet held by an individual or organization must conflict with a law of general applicability. The decisions of this Court have consistently recognized that a religious belief or tenet must be the motivating factor to trigger the protection of the Free Exercise Clause. *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 713-14 (1981); *Sherbert v. Verner*, 374 U.S. 398, 402-3 (1963). Market Street Mission has been unable to show the existence of any tenet of its religious doctrine which requires it to act in conflict with statutes that protect the health, safety, and

welfare of the residents of its facility. While the Mission as part of its rehabilitation program propagates a religious message to the residents, as expressed by the New Jersey Supreme Court, the government has no interest in regulating or prohibiting this religious program (Aa6).

Even though the State has expressly disavowed any interest in the Mission's religious program, the Mission asserts that facially the Act will have a coercive impact upon its ability to operate and therefore burden the practice of its religion. As the Mission has not attempted to comply with any provision of the Act, including the correction of the fire safety violations, any coercive impact or burden is merely a hypothesis fashioned by the Mission. Assuming, however, that hypothetically the Act would impact on the ability of the Mission to continue offering food, clothing, and shelter to the public, the Free Exercise Clause does not mandate that the Mission be excused from a law of general applicability which ensures that it provide food, shelter, and clothing in a safe and adequate manner. Compliance with any law may require a religious organization to limit the scope of its religious mission. Providing the homeless and socially handicapped with adequate and safe clothing, food, and shelter may require the Mission to divert its funds or reduce its operation to comply with the applicable standards. However, such an impact does not prohibit the Mission from observing its religious tenets. This incidental impact upon the ability of the Mission to successfully operate does not violate the Free Exercise Clause. *Bob Jones University v. United States*, 461 U.S. 574, 603-4 (1983).

Even if the Act burdened the Mission's exercise of its religious beliefs the State has sufficient interest to override the religious interests claiming protection under the Free Exercise Clause. The Court has recognized that religious organizations must comply with fire, building, and health regulations. *Lemon v. Kurtzman*, 403 U.S. 603, 614 (1971). Therefore, Market Street Mission may not avoid compliance with the Act which is intended to provide for the safety, maintenance and security of its facility. Also the Act is intended to protect the homeless and socially disabled who reside in boarding facilities from abuse and exploitation. Thus, a boarding house operator may not serve the residents rancid food, require the residents to live in filthy conditions, maintain the facility with dangerous building and fire safety violations, or prevent the residents from interacting with others. The religious affiliation of an organization is not any guarantee that abuses will not occur. See, e.g., *Candy H. v. Redemption Ranch, Inc.*, 563 F. Supp 505 (M.D. Ala. 1983) [In *Candy H.* a 19-year old pregnant woman entered a religious facility to have her child. She was required to remain at the facility for a year, she could not talk to other new residents for three months, her phone calls were monitored, and her mail was censored. Further the residents were confined to the facility. *Candy H. v. Redemption Ranch, Inc.*, *supra*, 563 F. Supp. at 511.] See, also, Annotation, "Liability of Religious Associations for Damages for Intentionally Tortious Conduct in Recruitment, Indoctrination, or Related Activity," 40 A.L.R. 4th 1062 (1985). Further, the Free Exercise Clause can not be construed to permit such action even if the action is essential to the practice of a religious belief. *Reynolds v. United States*, *supra*, 98 U.S. at 164; *Sherbert v.*

*Verner, supra*, 374 U.S. at 403. The State has a substantial and compelling interest in protecting the homeless and socially handicapped from abuses that may arise in rooming and boarding facilities even if these abuses may be carried out by a religious organization. Indeed, the homeless and socially handicapped have an essential interest in being protected from harm and abuses, even if the harm and abuses are inflicted upon them by a religious organization.

In granting an individual or organization an exemption from a law of general applicability because the law would violate the Free Exercise Clause, the Court has done so only when the exemption would not directly and adversely impact upon third parties. Thus, in *Thomas v. Review Bd. of Indiana Employment Security Div.*, *supra*, the Court found that an individual was wrongfully denied unemployment compensation after he quit his employment because he was transferred to a position which required him to manufacture armaments contrary to his religious belief. Similarly, in *Sherbert v. Verner, supra*, the Court held that an employee who was discharged from her employment because she refused to work on her Sabbath, was wrongfully denied unemployment compensation. In *Wisconsin v. Yoder, supra*, the Court granted an exemption to a State compulsory education law, since the tenets of the Old Order Amish prohibited children from attending school beyond the eighth grade. In contrast, when the exemption would directly impact upon third parties or important public policies the Court has not granted an exception to a law of general applicability even if the law conflicted with an individual's or organization's religious beliefs. Accordingly, in *Gillette v. United*



*States*, 401 U.S. 437 (1971), the Court refused to grant a constitutional exemption from the Selective Service laws to a person who objected on religious grounds to serving in "unjust" wars. In *United States v. Lee*, 455 U.S. 252 (1982), the Court refused to excuse an Amish farmer from paying social security taxes for his Amish employees, even though the payment of the taxes violated his religious beliefs. Further, the Court in *Bob Jones University v. United States*, *supra*, held that the Internal Revenue Service acted properly in denying tax exempt status to a religious university which practiced racial discrimination, even though the practice was mandated by its religious beliefs.

The decisions of the Court illustrate that in balancing the interests of the State and the religious interests of an individual or organization, religious interests will not prevail if non-compliance would adversely affect a third party or an essential public policy, or where the law in issue does not actually conflict with religious beliefs. Examining the current controversy in this context, the Act provides residents of boarding facilities with the right to live in a safe environment and to be free from abuse and exploitation. An exemption from compliance with this Act would recognize that a religious belief may permit the homeless and socially handicapped to be denied these rights merely because they have sought food, shelter, and clothing from a religious organization. The Free Exercise Clause does not compel this result.

As determined by the New Jersey Supreme Court, the Act is to be enforced in a manner which does not intrude into the Mission's religious affairs. This least



restrictive means is achieved through licensure and periodic inspections of rooming and boarding facilities. Absent licensure and periodic inspection of these facilities the State would lack essential knowledge of whether the health, safety, and welfare of the residents were being protected. *State ex rel. v. Heart Ministries, Inc.*, 607 P.2d 1102, 1111 (Kan. 1980), appeal dismissed, 449 U.S. 82 (1980). To carve an exclusion out of this legislative scheme for facilities operated by religious organizations would place the residents of these facilities at the complete whim of the operator. The result would be that the secular activity of providing clothing, food, and shelter would be governed exclusively by the religious organization with the State being unable to peer beyond the Mission's door. As determined by the Supreme Court of New Jersey such a result is not compelled by the Free Exercise Clause. Accordingly, there exists insufficient reason to further review this determination.

**B. The Act and Regulations,  
Which Are Intended to Protect  
the Health, Safety, and Welfare  
of Residents of Rooming and  
Boarding Facilities Do Not  
Result In A Violation of the  
Establishment Clause.**

Appellant's argument that the Act and regulations, and the Bureau's enforcement of the Act and regulations, violate the Establishment Clause of the First Amendment is likewise lacking in merit. Since 1971 this Court has with few exceptions utilized the *Lemon* test to determine whether a law violates the Establishment Clause. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). Under that test a law does not violate the Establishment Clause if it has a

secular purpose, if its primary effect neither advances nor inhibits religion, and it does not foster excessive government entanglement with religion. The Mission does not argue that the Act does not have a secular purpose (Ab11). However, the appellant argues that the Act and regulations excessively entangle the State in the Mission's religious affairs.

Obviously, the Act and regulations do not have the primary effect of advancing religion. Rather the primary effect is to maintain the health, safety, and welfare of the residents of rooming and boarding houses. This is not undercut by a provision in the Act's "Bill of Rights" protecting the residents' religious freedom. The protection of the religious freedom of the residents is a small part of the Act and a legitimate public purpose, and should not be construed as the promotion of religion in violation of the Establishment Clause. Equally important in this case is that this provision should not, and will not, be applied to the Mission so as to impinge upon its religious program.

In turning to the excessive entanglement argument the periodic health and safety inspections required by the Act do not involve the State in the examination of the religious message disseminated at the Mission. It is this involvement which results in excessive entanglement in religious affairs. *Aguilar v. Felton*, 473 U.S. 402, 409-14 (1985). The State's periodic inspection of the Mission's facility to ensure that the residents are being provided safe shelter, adequate food and clothing, and that the residents are not being abused or exploited is not excessive entanglement proscribed by the Establishment Clause. *Lemon v. Kurtzman*, *supra*, 403 U.S. at 614 (1971).

The secular activity of providing food, shelter and clothing to the homeless and socially handicapped can not be equated with the teaching of a religious doctrine. *Bowen v. Kendrick*, 487 U.S. \_\_\_, \_\_\_, 108 S.Ct. 2562, 2582, 101 L.Ed.2d 520, 550 (1988) (O'Connor, J., concurring); cf. *State ex rel. v. Heart Ministries, Inc.*, *supra*, 607 P.2d at 1111. While these good works may be performed as a result of the adherence to a religious belief, these secular activities do not become religious and outside of State regulation. The Mission's argument if accepted would permit the operation of a hospital or a soup kitchen which is motivated by an organization's religious belief to help others, to be free from any State health, fire, or building regulation which protects the recipients of the organization's good works. The erection of this absolute wall of separation is far beyond what is required by the Establishment Clause. *Lemon v. Kurtzman*, *supra*, 403 U.S. at 614.

Any conjecture by the Mission as to excessive entanglement is unfounded. The Bureau has not made any attempt to examine or otherwise inquire into the religious beliefs of the Mission. Further, the Bureau does not intend to examine or inquire into these religious beliefs. Nor is it necessary to review or evaluate the religious beliefs or programs of the Mission to determine if it provides adequate and safe shelter and food, or the other rights afforded by the Act. The Supreme Court of New Jersey in rejecting the facial attack on the Act, stated that it would not render a statute invalid on First Amendment grounds in anticipation of a possible unconstitutional application. This is consistent with the decisions of this Court. *Bowen v. Kendrick*, *supra*, 487 U.S. at \_\_\_, 108 S.Ct. at 2575, 101 L.Ed.2d at 542; *Roemer v. Maryland Public*

*Works Bd.*, 426 U.S. 736, 761 (1976). Further, the Supreme Court of New Jersey clearly directed the Bureau to proceed in a manner so as not to intrude into the religious affairs of the Mission. Thus, the Supreme Court of New Jersey correctly held that there is no basis to assume that the State will overstep its legal bounds and intrude into the religious affairs of the Mission or otherwise scrutinize the religious message being disseminated by the Mission. There is nothing in the record to support the Mission's speculation that the State is intent on implementing the Act in violation of the Establishment Clause. Therefore, there exists insufficient reasons to further review the determination of the New Jersey Supreme Court.

**C. There Exists no Evidence in the Record to Support the Appellant's Claim of Discrimination Enforcement in Violation of the Establishment Clause or of the Equal Protection Clause and the Act Does Not Violate the Equal Protection Clause.**

The Equal Protection Clause does not require that a statute apply equally to all persons. *Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966). Further, the Equal Protection Clause does not require that things different in fact be treated in law as if they were the same. *Ibid.* In determining whether the Equal Protection Clause is violated different levels of scrutiny are utilized. If a fundamental right or suspect class is involved, the legislation is subject to "strict scrutiny." *Graham v. Richardson*, 403 U.S. 365, 372 (1971). Strict scrutiny requires the State to demonstrate that a compelling need justifies the legislation and that no less restrictive alternative will accomplish the State's

objective. *Ibid.* The other test is the "rational basis" test. Under this test the legislation must address a legitimate State objective and the classification selected must be rationally related to the legislative objective. *Graham v. Richardson, supra*, 403 U.S. at 371-72. While the right to the free exercise of religion is a fundamental right the Court's inquiry should be limited to the rational basis test unless the Court concludes that the legislation does in fact violate the claimant's free exercise of religion. *Johnson v. Robison*, 415 U.S. 361, 375 n. 14 (1974). As the Act does not violate the Mission's free exercise of religion the rational basis test is the appropriate review standard.

Only one decision of this Court has invalidated a law on the basis of discriminatory enforcement among religious denominations in violation of the Establishment Clause. *Larson v. Valente*, 456 U.S. 228 (1982). In *Larson*, the Court found unconstitutional a statute which exempted religious organizations, which received 50 percent of their total contributions from their members, from the registration requirement imposed upon charitable institutions. The Court held that the 50 percent rule granted a denominational preference to well established religious organizations and that the State was unable to demonstrate a compelling reason to justify the rule. *Larson v. Valente, supra*, 456 U.S. at 244-55. However, unlike the *Larson* situation, the present Act focuses upon facilities both religious and secular, which provide room and board to the poor, elderly, and disabled and make no distinction based upon the religious affiliation of the organization.

The appellant, without any reference to the factual record below, broadly avers that the Bureau has discriminated by enforcing the Act against certain religious denominations and not against other religious denominations. To support this argument the Mission relies upon its previously advanced argument that the Bureau's alleged discriminatory action had the primary effect of inhibiting its religion in violation of the Establishment Clause (Ab11 n.5.). The Mission offers absolutely no evidence in this proceeding concerning the other religious facilities upon which it bases this argument. More particularly it offers no evidence that any other facility fell within the definition of "rooming and boarding house" so as to be subject to the Act. This argument was not and could not be given consideration by the courts below without such proof, and New Jersey contends there is no proof to support such a claim of discrimination. It is submitted that the failure of the New Jersey courts to even make a passing reference to this argument suggests the absence of any evidence in the record to support the claim.

A religious institution, such as the Mission, which offers its boarding facility to members of the public who are homeless and socially handicapped is differently situated from a facility which houses a rabbi, minister, or priest and his family, or a group of individuals who are primarily engaged in the dissemination of a religious doctrine. The Act is intended to protect the residents of the former facility. *N.J.S.A. 55:13B-2*. The homeless and socially handicapped who reside in the Mission's facility are the recipients of the good works of those who are engaged in the dissemination of a religious doctrine. The

homeless and socially handicapped are not engaged in pedagogy, rather they are receiving from their religious benefactors the necessities of life. The Mission's facility is more akin to a soup kitchen or hospital operated by a religious organization in which the public benefits from the good works of a religious organization. The fact that a facility which offers secular service to the public, such as a boarding house, soup kitchen, or hospital, is affiliated with a religious organization does not require that laws be fashioned to reach religious organizations which are not engaged in these types of activities. Further, any "convent, rectory, seminary, or monastery" which operates a large boarding facility for the homeless and socially handicapped would be subject to the Act. The Act is intended to protect these persons from harm and abuse, whether the harm and abuse are inflicted upon them by a religious or secular organization. New Jersey has a compelling interest to protect the homeless and socially handicapped persons who are housed in facilities operated by religious institutions whether these individuals reside in a facility called a "convent, rectory, seminary, monastery, or Mission." Therefore, there exists insufficient reasons to further review the determination of the New Jersey Supreme Court.

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## CONCLUSION

It is respectfully submitted that for the foregoing reasons the appeal should be dismissed or the judgment of the Supreme Court of New Jersey affirmed because the constitutional questions presented are so insubstantial as to not require further review, and also because the case does not raise any issue of special importance, does not conflict with federal precedent, and was correctly decided below.

Respectfully submitted,

CARY EDWARDS  
ATTORNEY GENERAL OF NEW JERSEY  
*Attorney for Appellee*  
R. J. Hughes Justice Complex  
CN 112  
Trenton, New Jersey 08625  
(609) 292-8564

JAMES J. CIANCIA  
Assistant Attorney General  
*Of Counsel*

EUGENE J. SULLIVAN  
Assistant Attorney General

JOHN J. CHERNOSKI  
Deputy Attorney General  
*On the Brief*

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